

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.) 07 Civ. 2488
(LAK)

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

Defendants.)

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VIDEOTAPED DEPOSITION OF RAYMOND KELLY
New York, New York
Tuesday, February 17, 2009

Reported by:
Philip Rizzuti
JOB NO. 20695

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February 17, 2009
2:24 p.m.

Videotaped deposition of RAYMOND
KELLY, held at the offices of Police
Headquarters, One Police Plaza, New
York, New York, pursuant to Subpoena,
before Philip Rizzuti, a Notary Public
of the State of New York

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

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

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

ALSO PRESENT: STEVEN SANPIETRO, Videographer
STEPHEN A. FOWLER,
THOMAS P. DOEPFNER,
S. ANDREW SCHAFFER,

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IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective
parties hereto, that the filing, sealing and
certification of the within deposition shall
be and the same are hereby waived;

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

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
before any Notary Public with the same force
and effect as if signed and sworn to before
the Court.

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Kelly
THE VIDEOGRAPHER: This is the
start of the tape labeled number 1 of the
videotape deposition of Police
Commissioner Raymond Kelly, in the matter 14:23:25
of Five Borough Bicycle Club versus the
City of New York. This deposition is
being held at One police Plaza, New York,
New York, on Tuesday, February 17, 2009
at approximately 2:24 p.m. 14:23:40

Will counsel please introduce
yourselves for the record.

MR. VACCARO: Steve Vaccaro,
Debevoise & Plimpton, representing
plaintiffs. 14:23:51

MS. DINGLE: Shanya Dingle also
from Debevoise & Plimpton, also
representing the plaintiffs.

MR. MUSCHENHEIM: Mike
Muschenheim, from Michael Cardozo, 14:23:59
Corporation Counsel, City of New York,
for the defendants.

MS. KOELEVELD: Celeste Koeleveld,
Corporation.

MR. CIAPPETTA: Nicholas 14:24:08

1 Kelly
 2 Ciappetta, also from the Corporation
 3 Counsel.
 4 MR. SCHAFFER: Andrew Schaffer,
 5 Deputy Commissioner, Legal Matters, 14:24:11
 6 Police Department.
 7 MR. DOEPFNER: Thomas Doepfner,
 8 Assistant Deputy Commissioner, legal
 9 bureau.
 10 THE VIDEOGRAPHER: Will the court 14:24:19
 11 reporter please swear in the witness.
 12 RAYMOND KELLY, called as a
 13 witness, having been duly sworn by a
 14 Notary Public, was examined and
 15 testified as follows: 14:24:23
 16 EXAMINATION BY
 17 MR. VACCARO:
 18 Q. Good afternoon, Commissioner.
 19 A. Good afternoon.
 20 Q. You are Raymond Kelly, 14:24:37
 21 Commissioner of the New York City Police
 22 Department?
 23 A. I am.
 24 Q. You hold a law degree?
 25 A. I do. 14:24:42
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1 Kelly
 2 Q. Are you a member of the bar?
 3 A. I am. I am in a retired status.
 4 Q. Of what state?
 5 A. New York. 14:24:49
 6 Q. You have testified previously in
 7 depositions?
 8 A. I have.
 9 Q. And in court?
 10 A. I have. 14:24:55
 11 Q. On numerous occasions?
 12 A. I'm sorry.
 13 MR. MUSCHENHEIM: Objection..
 14 Q. On numerous occasions?
 15 A. Fair number of occasions. 14:25:02
 16 Q. When did the group bicycle ride
 17 known as Critical Mass first come to your
 18 attention?
 19 A. I am not certain.
 20 Q. Do you know whether it was prior 14:25:12
 21 to the August 2004 Republican National
 22 Convention held in New York?
 23 A. Most likely, yes.
 24 Q. Going forward can I refer to the
 25 acronym RNC and you will know that I mean the 14:25:23
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1 Kelly
 2 August 2004 Republican National Convention?
 3 A. Yes.
 4 Q. How long before the RNC did you
 5 learn of Critical Mass? 14:25:31
 6 A. Difficult to say.
 7 Q. Was it a matter of months?
 8 A. Difficult to say. I would say --
 9 I would say probably before 2004.
 10 Q. And who brought Critical Mass to 14:25:47
 11 your attention at that time?
 12 A. I can't say exactly.
 13 Q. Can you recall having a discussion
 14 regarding Critical Mass with any specific
 15 persons prior to the RNC? 14:25:59
 16 A. I can't recall the specific
 17 conversation. Most likely if I did have a
 18 conversation it would be with the Chief of
 19 Department.
 20 Q. And at the time of the 14:26:11
 21 conversation with the -- withdrawn.
 22 Can you recall the specific Chief
 23 of the Department with whom you had a
 24 discussion regarding Critical Mass prior to
 25 the RNC? 14:26:25
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1 Kelly
 2 A. Joseph Esposito.
 3 MR. MUSCHENHEIM: Just note my
 4 objection to the characterization.
 5 Q. Can you recall the substance of 14:26:35
 6 your discussions with Chief Esposito?
 7 MR.. MUSCHENHEIM: Objection to the
 8 characterization.
 9 A. No, I am talking in a general
 10 sense. I had a discussion, I can't recall 14:26:44
 11 specifically.
 12 Q. Can you recall what you learned of
 13 Critical Mass when it was first brought to
 14 your attention?
 15 A. I know that it was a group of 14:26:51
 16 cyclists that got together on a regular basis,
 17 usually the last Friday of each month and road
 18 primarily in Manhattan.
 19 Q. And at the time that you first
 20 learned of Critical Mass did you learn the 14:27:09
 21 manner in which the route of the ride was
 22 determined?
 23 A. No.
 24 Q. What is your understanding today
 25 of the manner in which the route of the 14:27:22
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1 Kelly
 2 **Critical Mass rides are determined?**
 3 A. Determined today or determined in
 4 the past?
 5 **Q. Let's start with today, how do you 14:27:33**
 6 **believe the routes of the Critical Mass rides**
 7 **held today are determined?**
 8 A. Determined by the riders
 9 themselves.
 10 **Q. Is it your understanding that 14:27:41**
 11 **there is no predetermined route for these**
 12 **rides?**
 13 A. It is my understanding that there
 14 is no announced predetermined route.
 15 **Q. You believe that there may be an 14:27:51**
 16 **unannounced predetermined route for these**
 17 **rides?**
 18 A. Possible.
 19 **Q. What do you base that?**
 20 A. Common sense. 14:28:02
 21 **Q. You don't base it on any**
 22 **information that you have been provided by**
 23 **other officers at NYPD?**
 24 A. Perhaps.
 25 **Q. Can you recall any specific 14:28:11**
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1 Kelly
 2 **information that you have received that there**
 3 **are unannounced predetermined routes for**
 4 **Critical Mass?**
 5 A. Could you say that again. 14:28:22
 6 **Q. May I may have a read back.**
 7 **(Record read.)**
 8 A. No.
 9 **Q. And regarding Critical Mass rides**
 10 **held in the past do you have a different 14:28:43**
 11 **understanding as to the manner in which the**
 12 **route for those rides is determined?**
 13 A. My understanding at some time in
 14 the past prior to the convention, that the
 15 group would inform the police as to where they 14:29:02
 16 were going to go and the rides were in some
 17 way facilitated.
 18 **Q. And what is the source of**
 19 **information for your belief that at one time**
 20 **the participants informed the police of their 14:29:17**
 21 **route in advance?**
 22 A. Members of my staff, but I
 23 couldn't say precisely who.
 24 **Q. Can you recall when you received**
 25 **this information? 14:29:27**
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1 Kelly
 2 A. No.
 3 **Q. Was it prior to the RNC?**
 4 A. Yes.
 5 **Q. Can you recall how many times you 14:29:33**
 6 **were told this information?**
 7 A. No.
 8 **Q. Was this information provided to**
 9 **you in writing?**
 10 A. No. 14:29:43
 11 **Q. Is there any writing, report,**
 12 **memoranda or E-mail that you can think of that**
 13 **contains the information that you have**
 14 **described concerning the sharing of route**
 15 **information? 14:29:53**
 16 A. No.
 17 **Q. Have you ever personally been**
 18 **present and observed a Critical Mass ride?**
 19 A. Yes.
 20 **Q. On what occasion? 14:30:05**
 21 A. Around the time of the convention
 22 I observed a ride, I am going to say either --
 23 it was on Madison Avenue, either from the
 24 corner of 46th or 48th Street, Madison Avenue,
 25 eastbound street, and I observed a ride, many 14:30:24
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1 Kelly
 2 riders going north on Madison Avenue.
 3 **Q. And were you on duty at the time?**
 4 MR. MUSCHENHEIM: Objection.
 5 A. Yes. 14:30:42
 6 **Q. Were you advised that what you**
 7 **were observing was a Critical Mass bicycle**
 8 **ride?**
 9 A. I assume so.
 10 **Q. Do you recall obtaining 14:30:54**
 11 **information at that time to confirm that it**
 12 **was a Critical Mass bicycle ride?**
 13 A. I don't recall.
 14 **Q. But at the time you believed it**
 15 **was a Critical Mass bicycle ride? 14:31:05**
 16 A. I do.
 17 **Q. Do you recall providing a**
 18 **declaration in connection with plaintiff's**
 19 **motion to take your deposition in this matter?**
 20 A. I do. 14:31:15
 21 **Q. Do you recall stating in your**
 22 **declaration that: I do not believe that I was**
 23 **ever present at any of these rides, referring**
 24 **to monthly Critical Mass rides in Manhattan?**
 25 A. Yes. That statement is incorrect. 14:31:27
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1 Kelly
 2 I should have paid closer attention to that
 3 statement.
 4 **Q. When did you learn that the**
 5 **statement was incorrect? 14:31:37**
 6 A. When I read the statement more
 7 closely.
 8 **Q. After you had signed it?**
 9 A. Yes.
 10 **Q. What communications have you had 14:31:43**
 11 **with your staff regarding Critical Mass?**
 12 MR. MUSCHENHEIM: Objection as to
 13 the form.
 14 A. In what context?
 15 **Q. In the context of NYPD's response 14:32:03**
 16 **to the Critical Mass rides?**
 17 A. I have had some conversations with
 18 my staff over a period of time.
 19 **Q. Can you recall any specific staff**
 20 **member with whom you have discussed Critical 14:32:19**
 21 **Mass rides?**
 22 A. Chief Esposito.
 23 **Q. Any others?**
 24 A. Primarily Chief Esposito.
 25 **Q. Have you had discussions with the 14:32:36**
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1 Kelly
 2 **Borough Commander of Manhattan South regarding**
 3 **Critical Mass rides?**
 4 A. Yes.
 5 **Q. Any particular Borough Commander 14:32:43**
 6 **that you can recall?**
 7 A. Most likely Chief Smolka.
 8 **Q. Can you recall having discussions**
 9 **with any other Borough Commander of Manhattan**
 10 **South regarding the Critical Mass rides? 14:32:57**
 11 MR. MUSCHENHEIM: Could you read
 12 that back.
 13 (Record read.)
 14 A. I am assuming I had a conversation
 15 with Chief Tuller who preceded Chief Smolka. 14:33:10
 16 **Q. Do you recall discussing Critical**
 17 **Mass with Chief Smolka prior to the RNC?**
 18 A. Most likely.
 19 **Q. On how many occasions?**
 20 A. I can't recall. 14:33:30
 21 **Q. Can you recall the substance of**
 22 **any of your communications with Chief Smolka?**
 23 A. Only in a very general sense.
 24 **Q. And what generally was the**
 25 **substance of those conversations? 14:33:40**
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1 Kelly
 2 A. Nature of the Critical Mass rides.
 3 **Q. What did Chief Smolka tell you**
 4 **about the nature of the Critical Mass rides?**
 5 A. Again I can't recall specifically. 14:33:52
 6 I know I stepped on the question, sorry.
 7 I can't recall specifically.
 8 **Q. Did you correspond by E-mail with**
 9 **any members of your staff regarding Critical**
 10 **Mass rides? 14:34:11**
 11 A. Not that I recall.
 12 **Q. Do you recall any documents that**
 13 **you used to communicate with your staff**
 14 **regarding Critical Mass?**
 15 MR. MUSCHENHEIM: Objection to the 14:34:28
 16 form.
 17 A. Documents that I used to
 18 communicate with my staff?
 19 **Q. Yes.**
 20 A. No. 14:34:31
 21 **Q. And did you receive any documents**
 22 **from your staff describing Critical Mass**
 23 **rides?**
 24 A. Perhaps.
 25 **Q. You are not sure? 14:34:40**
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1 Kelly
 2 A. I am not.
 3 **Q. Do you receive information**
 4 **regarding the monthly Critical Mass rides**
 5 **presently? 14:34:47**
 6 A. Sometimes.
 7 **Q. How do you receive that**
 8 **information?**
 9 A. Usually they will be reported at a
 10 staff meeting if in fact they were of a nature 14:34:57
 11 that would require some sort of statement or
 12 notification.
 13 **Q. And who would make those reports?**
 14 A. Perhaps the Chief of Patrol.
 15 **Q. And can you recall at any time any 14:35:14**
 16 **report regarding a Critical Mass ride being**
 17 **made or memorialized in writing?**
 18 A. Do I recall a -- memorialized in
 19 writing to me?
 20 **Q. To anyone? 14:35:32**
 21 A. Well, I don't recall any to me,
 22 addressed to me, no.
 23 **Q. Do you recall seeing any writing**
 24 **describing or reporting on a Critical Mass**
 25 **ride addressed to anyone at NYPD? 14:35:48**
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1 Kelly
 2 A. Possibly.
 3 **Q. Do you know -- withdrawn.**
 4 **Are you familiar with the phrase**
 5 **unusual report? 14:35:56**
 6 A. No, I think what you mean is
 7 unusual occurrence report.
 8 **Q. You are familiar with a document**
 9 **known as an unusual occurrence report used**
 10 **within the NYPD? 14:36:08**
 11 A. It is a term that is used, yes.
 12 **Q. Is it sometimes referred to as a**
 13 **49?**
 14 A. A 49 is a piece of paper with a
 15 letterhead on it. 14:36:19
 16 **Q. Have you ever seen an unusual**
 17 **occurrence report regarding a Critical Mass**
 18 **ride?**
 19 A. Possibly.
 20 **Q. You can't say whether or not you 14:36:31**
 21 **have ever seen one?**
 22 MR. MUSCHENHEIM: Objection.
 23 A. No. I see a lot of reports. I
 24 can't recall specifically seeing one about the
 25 Critical Mass. I may have. 14:36:43
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1 Kelly
 2 **Q. Is it your understanding that such**
 3 **reports are prepared following Critical Mass**
 4 **rides?**
 5 A. Well, reports are prepared, they 14:36:50
 6 don't necessarily surface at my level.
 7 **Q. So it is your understanding that**
 8 **the reports are prepared?**
 9 A. Well, my understanding that
 10 reports may be prepared after an event. 14:37:06
 11 **Q. Do you have any files that you**
 12 **keep in your -- that you keep personally**
 13 **accessible to you in your workplace that**
 14 **contain information regarding Critical Mass?**
 15 A. No. 14:37:29
 16 **Q. I show you a document marked as**
 17 **Kelly Exhibit 2, it is Bates number NYCE**
 18 **011406.**
 19 **(Kelly Exhibit 2, document Bates**
 20 **numbered NYCE 11406, marked for 14:37:47**
 21 **identification, as of this date.)**
 22 **Q. Have you had an opportunity to**
 23 **review this brief E-mail exchange,**
 24 **Commissioner?**
 25 A. Yes, I have. 14:38:14
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1 Kelly
 2 **Q. Is this an E-mail exchange between**
 3 **you and Deputy Commissioner Paul Browne?**
 4 A. Well, this E-mail is from Deputy
 5 Commissioner Paul Browne to me. Is it an 14:38:18
 6 exchange; is there another one?
 7 **Q. This is --**
 8 A. Is there a response from me?
 9 **Q. This is the entire exhibit. But**
 10 **do you see the heading at the top from? 14:38:36**
 11 A. Yes.
 12 **Q. And the address that it is from is**
 13 **RKKELLY@VZW.BLACKBERRY.NET.**
 14 A. I see. It says why not, I'm
 15 sorry. Yes. 14:38:45
 16 **Q. Is that an E-mail address that you**
 17 **used for departmental communications on**
 18 **occasion?**
 19 A. Yes.
 20 **Q. This is your E-mail to Paul 14:38:53**
 21 **Browne?**
 22 A. Yes.
 23 **Q. Is this the only occasion on which**
 24 **you corresponded with Mr. Browne by E-mail?**
 25 A. No. 14:39:05
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1 Kelly
 2 MR. MUSCHENHEIM: Objection.
 3 **Q. Do you -- having reviewed this do**
 4 **you recall this communication with Mr. Browne?**
 5 A. Generally. 14:39:13
 6 **Q. Are you aware that Mr. Siegel**
 7 **referred to in Paul Browne's E-mail is Norman**
 8 **Siegel?**
 9 A. Yes.
 10 **Q. And this communication concerned 14:39:25**
 11 **Critical Mass; isn't that correct?**
 12 A. Most likely.
 13 **Q. And is this your only E-mail**
 14 **communication with Deputy Commissioner Browne**
 15 **concerning Critical Mass? 14:39:48**
 16 A. I am not sure.
 17 **Q. Do you know if anyone has looked**
 18 **in the E-mail account associated with this**
 19 **address to see if there are additional E-mail**
 20 **communications you may have made regarding 14:39:58**
 21 **Critical Mass?**
 22 A. I believe so.
 23 **Q. What is the basis of your belief?**
 24 A. That is the process --
 25 MR. MUSCHENHEIM: I don't want you 14:40:07
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1 Kelly
 2 to disclose any attorney work product or
 3 attorney/client communications.
 4 **Q. You can answer.**
 5 MR. MUSCHENHEIM: You can answer 14:40:21
 6 to the extent that you should not
 7 disclose any attorney/client or attorney
 8 work product.
 9 A. There was a process that is used
 10 to identify E-mail for litigation. I am 14:40:31
 11 assuming that is the process that was used to
 12 look at E-mail pertaining to this matter.
 13 **Q. You were told that that process**
 14 **included a search of E-mails associated with**
 15 **the E-mail address that appears at the top of** 14:40:49
 16 **Kelly 2?**
 17 A. I am assuming.
 18 **Q. No one specifically told you that?**
 19 A. That is my assumption.
 20 **Q. Can you recall having E-mail** 14:41:07
 21 **communications regarding Critical Mass with**
 22 **anyone the other than Deputy Commissioner**
 23 **Browne?**
 24 A. I don't recall.
 25 **Q. Can you explain why defendants** 14:41:28
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1 Kelly
 2 **have produced the copy of the E-mail that you**
 3 **sent to Mr. Browne, but not the copy from your**
 4 **account that you sent to Mr. Browne?**
 5 A. No. 14:41:42
 6 MR. MUSCHENHEIM: Objection..
 7 **Q. Have you received briefings on**
 8 **proposed plans for managing Critical Mass**
 9 **rides?**
 10 MR. MUSCHENHEIM: Objection to the 14:41:56
 11 form, but you can answer.
 12 A. Say again.
 13 MR. MUSCHENHEIM: Objection to the
 14 form, but you can answer.
 15 A. Yes. 14:42:00
 16 **Q. What are the nature of the**
 17 **briefings?**
 18 A. In a general sense they would be
 19 how many resources might be devoted to
 20 policing that event and many other events. 14:42:17
 21 **Q. With whom were those briefings**
 22 **conducted?**
 23 A. Sorry.
 24 **Q. Well, withdrawn.**
 25 **Who gave you the briefings?** 14:42:29
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1 Kelly
 2 A. Those briefings may be given by
 3 Chief of Department or the Chief of Patrol, or
 4 perhaps the Borough Commander.
 5 **Q. Did you receive any such briefings** 14:42:47
 6 **prior to the RNC?**
 7 A. Most likely.
 8 **Q. And can you recall which of the**
 9 **individuals that you just mentioned gave those**
 10 **pre RNC briefings?** 14:43:03
 11 A. We had hundreds of briefings
 12 before the RNC, literally hundreds about many,
 13 many issues. So I can't recall specifically
 14 who may have given a briefing on the Critical
 15 Mass demonstration. 14:43:26
 16 **Q. But you do believe that there were**
 17 **briefings specifically addressing Critical**
 18 **Mass that were conducted prior to the RNC?**
 19 A. When you say specifically Critical
 20 Mass, it may have been part of briefings on 14:43:38
 21 demonstrations more than just Critical Mass.
 22 **Q. Would the subject matter of the**
 23 **briefings that were held during the period**
 24 **leading up to the RNC be noted anywhere on**
 25 **your calendar?** 14:43:56
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1 Kelly
 2 A. No.
 3 **Q. Were they noted anywhere in**
 4 **written documents within NYPD?**
 5 A. I am not certain. 14:44:01
 6 **Q. If you were participating in**
 7 **hundreds of briefings how could you as a**
 8 **logistical matter keep track of them all if**
 9 **there was nothing in writing indicating the**
 10 **various briefings?** 14:44:17
 11 MR. MUSCHENHEIM: Objection to the
 12 form.
 13 A. Some were in writing.
 14 **Q. And were any of the Critical Mass**
 15 **briefings in writing?** 14:44:23
 16 A. I don't recall.
 17 **Q. Are the documents created in**
 18 **connection with these briefings filed?**
 19 A. I am assuming they are available.
 20 MR. MUSCHENHEIM: Objection. 14:44:36
 21 **Q. Where would they be kept?**
 22 A. In I would assume a variety of
 23 offices of people involved in the briefing.
 24 **Q. The type of documents that would**
 25 **be kept would include the reports conveying** 14:44:50
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1 Kelly
 2 the substance of the briefing?
 3 MR. MUSCHENHEIM: Objection.
 4 A. Yes.
 5 Q. Would they include meeting agendas 14:44:58
 6 as well?
 7 A. Perhaps.
 8 Q. Would there be minutes or other
 9 memorializations that would list the
 10 individuals who attended the briefings? 14:45:11
 11 A. It is possible.
 12 Q. Do you believe that any of these
 13 types of documents were kept in connection
 14 with any briefings concerning Critical Mass
 15 prior to the RNC? 14:45:22
 16 A. Perhaps.
 17 Q. Do you know whether there has been
 18 a search undertaken to determine whether such
 19 documents are still in the possession of NYPD?
 20 A. I would assume so. 14:45:36
 21 Q. Have you been told that that
 22 search has been conducted?
 23 A. No.
 24 Q. I show you the document marked
 25 Kelly Exhibit 1, your declaration made in 14:46:01
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1 Kelly
 2 connection with your appearance at this
 3 deposition.
 4 (Kelly Exhibit 1, declaration,
 5 marked for identification, as of this 14:46:01
 6 date.)
 7 Q. I am going to draw your attention
 8 specifically to paragraph 4 on page 2.
 9 MR. MUSCHENHEIM: Take your time
 10 to look at the whole document. 14:46:19
 11 Q. Turning back for a moment to a
 12 point we touched on earlier, you mentioned
 13 that you had been present at one Critical Mass
 14 ride?
 15 A. That I recall. 14:46:53
 16 Q. Can you recall any others at this
 17 time?
 18 A. No.
 19 Q. Paragraph 4 of your declaration
 20 you state that you received periodic briefings 14:47:04
 21 from members of your executive staff about the
 22 operational plans that had been developed for
 23 policing Critical Mass rides.
 24 Do you see that statement?
 25 A.. Yes. 14:47:14
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1 Kelly
 2 Q. And you received such operation --
 3 such briefings regarding operational plans
 4 after the RNC as well as prior to the RNC?
 5 A. Most likely. 14:47:27
 6 Q. Can you recall specifically
 7 receiving such briefings after the RNC?
 8 A. No.
 9 Q. Can you recall when the last such
 10 briefing was given to you? 14:47:39
 11 A.. No.
 12 Q. Was it in the last year?
 13 A. Most likely.
 14 Q. Can you recall who gave that
 15 briefing? 14:47:52
 16 A. Again I would have to say the
 17 Chief of Department Joseph Esposito, perhaps
 18 accompanied by Chief of Patrol.
 19 Q. Is that Nicholas S. Stabillo?
 20 A. No. Nicholas S. Stabillo retired 14:48:10
 21 now about two years ago, he is no longer the
 22 Chief of Patrol. Chief of Patrol is Robert
 23 Gianelli.
 24 Q. Were there any written documents
 25 provided at the most recent briefing you are 14:48:26
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1 Kelly
 2 referring to?
 3 A. I don't recall.
 4 Q. Do you recall whether there were
 5 any agendas or meeting minutes associated with 14:48:35
 6 that briefing?
 7 A. No. It would be unlikely because
 8 we normally have a staff meeting in this room
 9 and people would see me after the more formal
 10 part of the meeting, and that is when this 14:48:51
 11 type of brief would happen.
 12 Q. Were you ever briefed on a plan to
 13 use arrests and desk appearance tickets in
 14 connection with managing Critical Mass rides?
 15 A. Say that again. A plan to -- 14:49:21
 16 Q. Could you please read back the
 17 question.
 18 (Record read.)
 19 A. I don't know with that
 20 specificity, but obviously in general I 14:49:46
 21 received briefings about general tactics to be
 22 used.
 23 Q. Can you recall any briefing in
 24 which the use of arrests was specifically
 25 discussed as a tactic for use at a Critical 14:50:03
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1 Kelly
2 **Mass ride?**
3 A. Arrest as opposed to summons,
4 or --
5 **Q. As opposed to summons or warning 14:50:14**
6 **or anything else?**
7 A. I think an arrest would always be
8 a possibility depending on the activity that
9 occurred.
10 **Q. Well, were there to your knowledge 14:50:26**
11 **any arrests of Critical Mass participants**
12 **prior to the RNC?**
13 A. I believe so.
14 **Q. And when did those arrests take**
15 **place? 14:50:38**
16 A. I couldn't tell you.
17 **Q. And what was the context of those**
18 **arrests?**
19 A. I can't say specifically.
20 **Q. Who informed you of the arrest? 14:50:45**
21 A. I am assuming the Chief of
22 Department.
23 **Q. How many such arrest were there to**
24 **your knowledge?**
25 A. I have no knowledge. 14:50:55
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1 Kelly
2 **Q. What was your understanding of the**
3 **general nature -- withdrawn.**
4 **Were there a large number of**
5 **arrests of Critical Mass participants prior to 14:51:02**
6 **the RNC?**
7 MR. MUSCHENHEIM: Objection to
8 form.
9 A. I don't recall.
10 **Q. Were there a handful? 14:51:11**
11 MR. MUSCHENHEIM: Objection to the
12 form.
13 A. There were some arrests.
14 **Q. Do you know if it was less than**
15 **ten? 14:51:21**
16 A. At a particular event or on an
17 ongoing basis?
18 **Q. On an ongoing basis for all**
19 **Critical Mass rides held prior to the RNC?**
20 MR. MUSCHENHEIM: Hold on. Can 14:51:33
21 you repeat that question.
22 (Record read.)
23 MR. MUSCHENHEIM: Objection to the
24 form of the question.
25 **Q. But you can answer? 14:52:24**
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1 Kelly
2 A. I would assume there would be more
3 than ten.
4 **Q. But that is not based on any**
5 **specific information that you received? 14:52:35**
6 MR. MUSCHENHEIM: Objection.
7 A. Not at this time, no. I mean I
8 don't recall.
9 **Q. Do you know whether those arrests**
10 **occurred in 2003? 14:52:48**
11 A. I can't say with certainty.
12 **Q. Can you -- you need not answer**
13 **with certainty. Do you have information that**
14 **any of those arrests occurred in 2003?**
15 A. I don't have that information. 14:53:04
16 **Q. Do you have any information as to**
17 **when the first of those arrests took place?**
18 A. No.
19 **Q. Do you know if they all took place**
20 **in 2004? 14:53:18**
21 A. No.
22 **Q. They may have all taken place in**
23 **2001?**
24 A. I wasn't Commissioner in 2001. I
25 don't know. I wouldn't know. 14:53:30
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1 Kelly
2 **Q. Do you know whether summonses were**
3 **issued to participants in Critical Mass rides**
4 **prior to the RNC?**
5 A. I am assuming some were, yes. 14:53:41
6 **Q. What is your assumption based on?**
7 A. General knowledge.
8 **Q. What are the sources of your**
9 **general knowledge on that point?**
10 A. Reports, staff members. 14:53:54
11 **Q. Which staff members reported to**
12 **you that Critical Mass participants were**
13 **issued summonses prior to the RNC?**
14 A. Probably Chief of the Department.
15 **Q. What did the Chief of Department 14:54:04**
16 **tell you?**
17 A. I can't recall specifically.
18 **Q. Can you recall the number of**
19 **summonses the Chief of Department had**
20 **indicated been issued? 14:54:11**
21 A. No.
22 **Q. Do you recall the years in which**
23 **those summonses had been issued?**
24 A. No.
25 **Q. Do you recall the nature of the 14:54:18**
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1 Kelly
 2 offenses for which the summonses had been
 3 issued?
 4 A. No.
 5 Q. During the briefings that you 14:54:34
 6 received, and this is for the entire period
 7 both pre and post RNC, during the briefings
 8 that you received do you ever recall hearing a
 9 proposal for a plan to apply a specific
 10 numeric threshold in terms of the size of the 14:54:48
 11 group against which law enforcement action
 12 would be taken?
 13 MR. MUSCHENHEIM: Could you read
 14 that back, please.
 15 (Record read.) 14:55:01
 16 MR. MUSCHENHEIM: Objection to the
 17 form.
 18 A. Are you referring to the parade
 19 regulation?
 20 Q. I am actually not referring to the 14:55:42
 21 amendment of the parade regulations, so I am
 22 asking specifically about briefings as to how
 23 NYPD personnel would handle the Critical Mass
 24 rides as they occurred?
 25 MR. MUSCHENHEIM: I am sorry, 14:56:01
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1 Kelly
 2 could you repeat that question.
 3 (Record read.)
 4 MR. MUSCHENHEIM: Objection.
 5 A. The answer is no. 14:56:26
 6 Q. And because of how the question
 7 came out I will just ask again in a different
 8 way.
 9 So you do not recall any briefings
 10 in which it was proposed that a specific 14:56:48
 11 numeric threshold would be used at the scene
 12 of the Critical Mass rides as a basis for
 13 determining whether law enforcement action
 14 would be taken?
 15 A. That is correct, I don't recall. 14:56:51
 16 Q. Do you ever recall during the
 17 briefings you received -- withdrawn.
 18 I will refer to them as
 19 operational briefings and that is the phrase
 20 that is used in paragraph 4 of your 14:57:15
 21 declaration. Or operational plans, to
 22 distinguish briefings you may have had
 23 regarding the parade regulations, will that be
 24 acceptable?
 25 A. You have to say that again, 14:57:28
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1 Kelly
 2 please.
 3 Q. For purposes of questioning if I
 4 refer to operational plans I am talking about
 5 briefings related to how Critical Mass rides 14:57:39
 6 would be managed on the scene as opposed to
 7 the amendment of the parade rules. So I want
 8 to lay that down as a ground rule for our
 9 deposition, is that acceptable?
 10 A. You are getting back to the number 14:57:58
 11 now?
 12 Q. No. I am merely trying to lay the
 13 ground work that when I refer to operational
 14 plans I am referring only to how NYPD
 15 personnel at the Critical Mass rides would 14:58:11
 16 manage the event?
 17 A. Did I receive briefings; I am
 18 missing something here. Start again.
 19 Q. Withdrawn.
 20 Do you recall receiving any 14:58:21
 21 briefings concerning operational plans that
 22 addressed the specific offenses with which
 23 Critical Mass participants would be charged?
 24 A. No.
 25 Q. Do you have an understanding of 14:58:34
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1 Kelly
 2 the offenses with which Critical Mass
 3 participants have been charged?
 4 A. In a general sense.
 5 Q. What is your understanding? 14:58:43
 6 A. Sometimes disorderly conduct,
 7 sometimes violations of the traffic
 8 regulations or Vehicle and Traffic Law.
 9 Q. You are aware that during the
 10 period following the RNC for some period of 14:58:56
 11 time there were charges against Critical Mass
 12 bicyclists for violations of the New York City
 13 Administrative Code, Section 10-110?
 14 MR. MUSCHENHEIM: Objection to the
 15 form. 14:59:14
 16 A. What sections?
 17 Q. That is the section that concerns
 18 parading without a permit?
 19 A. Most likely, yes.
 20 Q. You are aware that Critical Mass 14:59:26
 21 bicyclists following the RNC were arrested and
 22 charged with parading without a permit, among
 23 other offenses?
 24 A. I believe so.
 25 Q. Do you ever recall receiving a 14:59:45
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1 Kelly
 2 **briefing in which it was explained to you that**
 3 **NYPD personnel would arrest any group of five**
 4 **bicyclists committing traffic violations**
 5 **together on the last Friday of the month in 15:00:02**
 6 **the Union Square vicinity?**

7 A. The question has to do with five
 8 bicyclists together committing violations?

9 Q. Yes.

10 A. No. 15:00:16

11 Q. **At any point did you understand**
 12 **that the NYPD's operational procedure was to**
 13 **arrest groups of five bicyclists viewed**
 14 **committing traffic violations at the same**
 15 **time? 15:00:36**

16 MR. MUSCHENHEIM: Objection to the
 17 form.

18 A. No.

19 Q. Were you ever briefed on proposed
 20 zero tolerance traffic law enforcement against 15:00:45
 21 Critical Mass participants?

22 MR. MUSCHENHEIM: Objection.

23 A. No.

24 Q. **Are you familiar with an**
 25 **individual named Deputy Inspector DeQuatro? 15:00:54**

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1 Kelly
 2 MR. MUSCHENHEIM: Objection.

3 A. Yes.

4 Q. **Are you aware that he has served**
 5 **as Incident Commander for a number of Critical 15:01:01**
 6 **Mass details?**

7 A. It is not unusual, he is a
 8 commanding officer for a precinct in Manhattan
 9 South.

10 Q. **But do you know whether he has 15:01:17**
 11 **served as Incident Commander for Critical Mass**
 12 **details?**

13 A. I don't know specifically, but I
 14 would assume so because of his position in the
 15 borough. 15:01:30

16 Q. **Were you aware that Inspector**
 17 **DeQuatro testified in this matter that he**
 18 **would brief the senior officers prior to the**
 19 **Critical Mass details for which he served as**
 20 **Incident Commander? 15:01:47**

21 A. That would be normal practice.

22 Q. **Were you aware that in this matter**
 23 **Inspector DeQuatro testified that he would**
 24 **state during these briefings that there was a**
 25 **zero tolerance law enforcement policy to be 15:02:05**

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1 Kelly
 2 **applied to the Critical Mass bicyclists?**
 3 MR. MUSCHENHEIM: Objection.
 4 A. No.
 5 Q. **Is Inspector DeQuatro authorized 15:02:15**
 6 **to apply a zero tolerance law enforcement**
 7 **policy against Critical Mass bicyclists?**

8 MR. MUSCHENHEIM: Objection to the
 9 form. You can answer.

10 A. It would depend on the 15:02:33
 11 circumstances, I don't know enough about what
 12 the circumstances were.

13 Q. **Would it be consistent with your**
 14 **view of how NYPD manages the Critical Mass**
 15 **rides for the incident commanders for the 15:02:57**
 16 **Critical Mass details to state that zero**
 17 **tolerance law enforcement should be applied?**

18 MR. MUSCHENHEIM: Objection. Can
 19 you read that back, please.

20 A. It would depend on the 15:03:09
 21 circumstances..

22 (Record read.)

23 A. It depends on the circumstances.

24 Q. **And under what circumstances would**
 25 **zero tolerance law enforcement be appropriate? 15:03:56**

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1 Kelly
 2 A. I don't know if I can -- I would
 3 have to speculate, you would have to be there.
 4 I don't know what the circumstances were.

5 Q. **Can you give a single concrete 15:04:10**
 6 **non-exclusive example of circumstances in**
 7 **which such a policy would be appropriate?**

8 MR. MUSCHENHEIM: Objection. Go
 9 ahead.

10 A. No. I would want to know more of 15:04:21
 11 the specifics before I could answer that
 12 question.

13 Q. **What is your understanding of what**
 14 **the zero tolerance law enforcement means?**

15 A. It is not an expression that I 15:04:31
 16 use.

17 Q. **Is it an expression used within**
 18 **the NYPD?**

19 A. Sometimes.

20 Q. **What does it mean when used within 15:04:40**
 21 **NYPD?**

22 A. I would assume that any violations
 23 of the law are going to result in police
 24 taking action.

25 Q. **And the action would be law 15:04:51**

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1 Kelly
 2 enforcement action?
 3 A. Yes.
 4 Q. And arrest or a summons would be a
 5 type of law enforcement action? 15:05:02
 6 A. Most likely.
 7 Q. In a zero tolerance law
 8 enforcement situation the officer's discretion
 9 to give a warning instead of arrest or summons
 10 would be limited? 15:05:16
 11 A. I don't know, it is not a phrase
 12 that I use, and again I would want to know the
 13 circumstances.
 14 Q. Well, wouldn't you expect that in
 15 a zero tolerance law enforcement situation 15:05:26
 16 that an officer's discretion to decline to
 17 enforce the law in any way would be limited?
 18 MR. MUSCHENHEIM: Objection.
 19 A. Perhaps.
 20 Q. What else could zero tolerance law 15:05:38
 21 enforcement mean?
 22 A. It is not a phrase I use, it is
 23 not an expression that I use. You are asking
 24 me to comment on an expression used by someone
 25 else in a situation that I am not aware of. 15:05:52
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1 Kelly
 2 You are not giving me any of the specifics as
 3 to what happened or what was being addressed
 4 by that directive.
 5 Q. Let's take a look at Inspector 15:06:03
 6 DeQuatro's testimony. We are not going to
 7 mark these.
 8 I would like to direct the
 9 Commissioner's attention to page 166, line 3.
 10 I will read a section of the transcript and 15:06:48
 11 then I will have a question for you,
 12 Commissioner.
 13 "Question: Did you inform
 14 officers under your command that there
 15 was to be a zero tolerance policy as 15:07:07
 16 applied to traffic violations of Critical
 17 Mass participants?
 18 "Answer: On occasion I had used
 19 that phrase while briefing the
 20 subordinates under me, yes. 15:07:21
 21 "Question: On the occasions where
 22 you did not use that phrase did that mean
 23 that there was not such a policy in
 24 effect on those dates:
 25 "Mr. Muschenheim: Objection, you 15:07:37
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1 Kelly
 2 can answer.
 3 "Answer: As you go through the
 4 vast majority of those details you will
 5 see that it is more or less the same 15:07:46
 6 captains over and over again
 7 participating in the detail. So in my
 8 opinion there was an understanding if I
 9 left it out.
 10 "Question: So even if it was not 15:08:01
 11 explicitly stated during the detail
 12 briefing it was understood among the
 13 subordinate officers that there would be
 14 a zero tolerance policy for traffic
 15 violations against Critical Mass 15:08:13
 16 participants?
 17 "Answer: Yes, sir."
 18 Q. My question for you, Commissioner,
 19 is whether based on that portion of the
 20 transcript you are able to give a response to 15:08:26
 21 my question what is the meaning of a zero
 22 tolerance law enforcement policy in the
 23 context of a NYPD Critical Mass detail?
 24 MR. MUSCHENHEIM: Objection as to
 25 the form. 15:08:44
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1 Kelly
 2 A. I can only tell you that my common
 3 sense understanding would be that if there are
 4 violations of law, that action on the part of
 5 the officers being arrest or summons would be 15:09:00
 6 taken.
 7 Q. You would agree with me that the
 8 testimony of Inspector DeQuatro suggests that
 9 there was a standing policy of zero tolerance
 10 law enforcement at the Critical Mass rides at 15:09:14
 11 which he served as an Incident Commander?
 12 MR. MUSCHENHEIM: Objection as so
 13 the characterization.
 14 A. He seems to be implying that, yes.
 15 Q. Is such a standing policy 15:09:25
 16 consistent with your understanding of NYPD's
 17 policy with respect to Critical Mass law
 18 enforcement?
 19 A. As a general rule, standing
 20 directive, that is not my understanding. 15:09:41
 21 Q. Was Inspector DeQuatro authorized
 22 to establish a standing policy of zero
 23 tolerance law enforcement for the Critical
 24 Mass rides where he served as Incident
 25 Commander? 15:09:57
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1 **Kelly**
 2 MR. MUSCHENHEIM: Objection as to
 3 the form of the question.
 4 A. As far as enforcement action is
 5 concerned that is a judgment that should be 15:10:02
 6 made by the commanders on the scene.
 7 **Q. And if he was Incident Commander**
 8 **then it would be consistent with NYPD policy**
 9 **for him to have the authority to establish a**
 10 **standing zero tolerance law enforcement policy 15:10:19**
 11 **for the Critical Mass rides?**
 12 MR. MUSCHENHEIM: Objection.
 13 A. In terms of actions of those
 14 officers at the scene of that particular
 15 event, I don't see it as being unreasonable. 15:10:31
 16 **Q. When you say you don't see it as**
 17 **being unreasonable, then you would also agree**
 18 **that it was not a violation of NYPD policy for**
 19 **Inspector DeQuatro to establish a standing**
 20 **zero tolerance law enforcement policy at the 15:11:04**
 21 **Critical Mass rides where he was Incident**
 22 **Commander?**
 23 MR. MUSCHENHEIM: Objection to the
 24 characterization.
 25 A. I don't know the circumstances, 15:11:11
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1 Kelly
 2 but I believe that in my judgment that it is
 3 in the purview of a commander, a high ranking
 4 commander to make a determination as to what
 5 enforcement actions would be taken in response 15:11:28
 6 to a particular situation.
 7 **Q. Are you aware of any other**
 8 **Incident Commander in the context of any event**
 9 **other than Critical Mass establishing a zero**
 10 **tolerance law enforcement policy? 15:11:47**
 11 MR. MUSCHENHEIM: Objection.
 12 A. No.
 13 **Q. You can't name any instance in**
 14 **which an Incident Commander established a zero**
 15 **tolerance law enforcement policy other than a 15:12:00**
 16 **Critical Mass ride?**
 17 MR. MUSCHENHEIM: Objection.
 18 Asked and answered.
 19 A. Not that I am aware of.
 20 **Q. Were you ever briefed on an 15:12:06**
 21 **operational plan to issue traffic summonses to**
 22 **Critical Mass bicyclists?**
 23 A. Perhaps.
 24 **Q. Can you recall at any time a**
 25 **discussion with your staff regarding the 15:12:34**
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1 **Kelly**
 2 **merits of shifting to summoning for traffic**
 3 **violations as opposed to arresting Critical**
 4 **Mass participants for parading without a**
 5 **permit or disorderly conduct? 15:12:48**
 6 A. It is possible.
 7 **Q. Do you have any specific**
 8 **recollection of such a discussion?**
 9 A. No.
 10 **Q. Do you have any recollection of 15:12:56**
 11 **such a change in policy in managing the**
 12 **Critical Mass rides?**
 13 A. I have no specific recollection.
 14 **Q. Is it your understanding as you**
 15 **testify today that at a certain point in time 15:13:12**
 16 **NYPD stopped mass arrests at Critical Mass**
 17 **bicycle rides and began issuing summonses**
 18 **instead?**
 19 MR. MUSCHENHEIM: Objection as to
 20 the characterization. 15:13:24
 21 A. Say that question again, please.
 22 (Record read.)
 23 A. As I testified today or as I
 24 testify today?
 25 **Q. As you testify today based on your 15:14:02**
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1 **Kelly**
 2 **current understanding and all of the**
 3 **information available to you today is it your**
 4 **understanding that at a certain point in time**
 5 **there was a shift in the NYPD management of 15:14:12**
 6 **the Critical Mass rides from one of mass**
 7 **arrests to one of summoning for traffic**
 8 **violations?**
 9 MR. MUSCHENHEIM: Note my
 10 objection to the characterization. 15:14:25
 11 A. In a general sense, yes.
 12 **Q. Do you have an understanding of**
 13 **when that shift took place?**
 14 A. No.
 15 Q.. Do you have an understanding of 15:14:32
 16 the reason for that shift?
 17 A. I don't recall the specific reason
 18 for it.
 19 **Q. Do you recall who provided you**
 20 **with any information regarding that shift in 15:14:52**
 21 **policy?**
 22 A. Not specifically, no.
 23 **Q. Can you recall whether the shift**
 24 **in policy was proposed for your approval or**
 25 **disapproval? 15:15:08**
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1 Kelly
 2 A. Most likely.
 3 **Q. Most likely it was proposed for**
 4 **your approval or disapproval?**
 5 A. Probably. 15:15:18
 6 **Q. Can you recall who proposed that**
 7 **to you?**
 8 MR. MUSCHENHEIM: Objection.
 9 A. Not specifically, no.
 10 **Q. Were you ever briefed on the use 15:15:28**
 11 **of bike mounted NYPD officers in connection**
 12 **with Critical Mass rides?**
 13 MR. MUSCHENHEIM: Are we talking
 14 about uniformed bike mounted officers or
 15 are we talking about other officers? 15:15:46
 16 **Q. That is not my question. My**
 17 **question is bike mounted officers?**
 18 MR. MUSCHENHEIM: I am directing
 19 the witness not to answer any questions
 20 relating to any officers other than 15:15:58
 21 uniformed officers who are on bikes. To
 22 the extent that the question calls for
 23 information relating to other such
 24 officers, if they were at such bike rides
 25 that would be covered by the law 15:16:18
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1 Kelly
 2 enforcement privilege.
 3 MR. VACCARO: I object to your
 4 instruction, but let's see if the witness
 5 can answer the question to the extent 15:16:26
 6 that counsel has not instructed him not
 7 to refrain from answering?
 8 A. Read the question again, please.
 9 (Record read.)
 10 MR. MUSCHENHEIM: You can answer 15:16:50
 11 that question to the extent that it asks
 12 about bike mounted uniformed officers.
 13 A. Probably.
 14 **Q. Do you know if bike mounted**
 15 **officers were ever used in connection with 15:17:07**
 16 **Critical Mass rides?**
 17 MR. MUSCHENHEIM: Same direction,
 18 only as to uniformed officers, you can
 19 only answer a --
 20 A. When you say bike mounted, I know 15:17:16
 21 that there are officers on scooters.
 22 **Q. I am not referring to motorized**
 23 **scooters, I am referring to bicycles?**
 24 A. I don't recall.
 25 **Q. Are you aware of reports in The 15:17:27**
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1 Kelly
 2 **New York Times to the effect that NYPD has**
 3 **used bike mounted undercover officers at**
 4 **Critical Mass rides?**
 5 MR. MUSCHENHEIM: You can answer 15:17:48
 6 that question --
 7 A. Can you say it again.
 8 MR. MUSCHENHEIM: Read it back.
 9 (Record read.)
 10 A. Yes. 15:18:10
 11 **Q. Are you aware that the reports**
 12 **indicate that these undercover officers have**
 13 **been on occasion mistakenly arrested?**
 14 MR. MUSCHENHEIM: You can answer
 15 that question as to The New York Times? 15:18:27
 16 A. No.
 17 **Q. Are you aware --**
 18 A. You are saying officers mistakenly
 19 arrested?
 20 **Q. Yes? 15:18:37**
 21 A. No.
 22 **Q. Are you aware that the reports**
 23 **indicate that the reason for those mistaken**
 24 **arrests is that the undercover officers were**
 25 **engaged in the same conduct for which the 15:18:46**
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1 Kelly
 2 **Critical Mass bicyclists were arrested?**
 3 MR. MUSCHENHEIM: You can only
 4 answer that question as to your awareness
 5 from The New York Times? 15:18:58
 6 A. No.
 7 **DI Q. Do you deny those reports in The**
 8 **New York Times?**
 9 MR. MUSCHENHEIM: Don't answer
 10 that question under the law enforcement 15:19:04
 11 privilege.
 12 **Q. Have you ever been briefed on the**
 13 **dispositions in the courts of charges brought**
 14 **against Critical Mass participants?**
 15 A. Probably. 15:19:19
 16 **Q. Can you recall being briefed with**
 17 **respect to dispositions arising from the**
 18 **period during which NYPD was engaging in mass**
 19 **arrests of Critical Mass participants?**
 20 MR. MUSCHENHEIM: Objection to the 15:19:37
 21 characterization.
 22 A. What period is that?
 23 **Q. The period prior to the shift to**
 24 **summonsing activity?**
 25 A. No, I don't recall. 15:19:46
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1 Kelly
 2 **Q. Can you recall receiving reports**
 3 **of dispositions of the summonses issued to**
 4 **Critical Mass bicyclists?**
 5 A. No. 15:20:02
 6 **Q. What do you recall -- withdrawn.**
 7 **What is your understanding with**
 8 **respect to the disposition of charges brought**
 9 **against Critical Mass bicyclists?**
 10 MR. MUSCHENHEIM: I am sorry, 15:20:23
 11 could you repeat that question?
 12 (Record read.)
 13 A. I am not certain I understand that
 14 question. My understanding of charges, what
 15 does that mean? 15:20:46
 16 **Q. Your understanding of**
 17 **dispositions. For example do you have an**
 18 **understanding that courts generally have**
 19 **dismissed charges brought against Critical**
 20 **Mass participants?** 15:21:00
 21 MR. MUSCHENHEIM: Objection.
 22 A. Yes.
 23 **Q. And during what time period is it**
 24 **your understanding that the courts generally**
 25 **speaking dismissed charges against the** 15:21:09
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1 Kelly
 2 **Critical Mass participants?**
 3 MR. MUSCHENHEIM: Objection.
 4 A. I would say post RNC.
 5 **Q. Do you have a different** 15:21:25
 6 **understanding with respect to the disposition**
 7 **of summonses written for traffic violations**
 8 **against Critical Mass participants?**
 9 A. Not really.
 10 **Q. You have the same general** 15:21:42
 11 **understanding with respect to dispositions of**
 12 **traffic summonses against Critical Mass**
 13 **participants?**
 14 A. In general.
 15 MR. MUSCHENHEIM: Objection to the 15:21:53
 16 form.
 17 **Q. Have you ever been briefed**
 18 **regarding the disposition of charges against**
 19 **Critical Mass participants by members of your**
 20 **staff?** 15:22:08
 21 MR. MUSCHENHEIM: Objection.
 22 Asked and answered.
 23 A. No, not that I recall.
 24 **Q. Can you recall any discussions**
 25 **with members of your staff regarding the trend** 15:22:15
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1 Kelly
 2 **in dispositions of charges against Critical**
 3 **Mass participants?**
 4 A. No.
 5 **Q. Is the trend in disposition of** 15:22:21
 6 **charges against Critical Mass participants a**
 7 **factor in the NYPD's policy decisions**
 8 **regarding how to manage Critical Mass?**
 9 MR. MUSCHENHEIM: Objection as to
 10 the form. 15:22:42
 11 A. Sometimes.
 12 **Q. On what occasions has it been a**
 13 **factor?**
 14 A. Obviously the action on the part
 15 of the court can be a factor on influencing 15:22:57
 16 the actions on the part of the officers.
 17 **Q. On what specific occasion can you**
 18 **recall NYPD taking into account dispositions**
 19 **in determining its policy for managing**
 20 **Critical Mass rides?** 15:23:20
 21 A. I can't.
 22 **Q. Do you know whether there has been**
 23 **any such specific occasion?**
 24 A. I am not aware.
 25 **Q. Have you discussed Critical Mass** 15:23:39
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1 Kelly
 2 **with anyone in the Mayor's office?**
 3 A. No.
 4 **Q. Have you discussed it, Critical**
 5 **Mass, with Deputy Mayor Skydel?** 15:23:50
 6 A. Who?
 7 MR. MUSCHENHEIM: Objection.
 8 **Q. Skyler, I mis-spoke?**
 9 A. Deputy Mayor Skyler, not that I
 10 recall. 15:23:59
 11 **Q. Do you recall discussing with**
 12 **Deputy Mayor Skyler the amendment to the**
 13 **parade rules?**
 14 A. It is possible.
 15 **Q. But you don't have any specific** 15:24:10
 16 **recollection of such a discussion?**
 17 A. I do not.
 18 **Q. Did you discuss Critical Mass with**
 19 **Deputy Mayor Doctoroff?**
 20 A. No. 15:24:25
 21 **Q. Did you discuss the amendment of**
 22 **the parade rules with Deputy Mayor Doctoroff?**
 23 A. I don't believe so.
 24 **Q. Have you discussed Critical Mass**
 25 **the Mayor?** 15:24:35
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1 Kelly
 2 A. No.
 3 **Q. Have you discussed with the**
 4 **amendment of the parade rules with the Mayor?**
 5 A. No, not that I recall. 15:24:44
 6 **Q. Have you discussed Critical Mass**
 7 **or the amendment of the parade rules with any**
 8 **members of the Mayor's staff other than those**
 9 **asked about in my prior questions?**
 10 MR. MUSCHENHEIM: Objection. 15:25:00
 11 A. No.
 12 **Q. Did anyone at the Mayor's office**
 13 **authorize the amendment of the parade rules?**
 14 MR. MUSCHENHEIM: Objection.
 15 A. No. Not that I am aware of. 15:25:18
 16 **Q. Was the approval of any individual**
 17 **in the Mayor's office sought in connection**
 18 **with the amendment of the parade rules?**
 19 MR. MUSCHENHEIM: Objection.
 20 A. I don't believe so. 15:25:29
 21 **Q. Is it your understanding that it**
 22 **is NYPD's policy to assign a detail of**
 23 **officers to each monthly Manhattan Critical**
 24 **Mass ride?**
 25 A. A detail; probably. 15:25:50
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1 Kelly
 2 **Q. Do you know how long NYPD has been**
 3 **assigning a detail to the Manhattan Critical**
 4 **Mass rides?**
 5 A. I would say several years. 15:26:06
 6 **Q. Do you know whether this practice**
 7 **existed prior to the RNC?**
 8 A. I am assuming it did.
 9 **Q. What do you base your assumption**
 10 **on?** 15:26:21
 11 A. General knowledge.
 12 **Q. What are the sources of your**
 13 **general knowledge?**
 14 A. Staff. Staff briefing.
 15 **Q. Can you recall any staff briefing 15:26:29**
 16 **in which it was told to you that there was a**
 17 **detail assigned to each Critical Mass ride**
 18 **prior to the RNC?**
 19 A. No, I can't.
 20 **Q. Can you -- withdrawn. 15:26:41**
 21 **Did you learn at any time when**
 22 **NYPD began to assign details to Critical Mass**
 23 **rides?**
 24 A. No.
 25 **Q. Do you know if NYPD assigned 15:26:54**
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1 Kelly
 2 **details to Critical Mass rides in 2003?**
 3 A. I am not certain.
 4 **Q. Well, do you have an**
 5 **understanding?** 15:27:12
 6 A. I would believe so based on the
 7 type of conduct on the part of the gatherings.
 8 **Q. Are you aware that in late 2004**
 9 **the details assigned were in excess of 700**
 10 **NYPD personnel?** 15:27:35
 11 A. The size of the detail depends on
 12 the nature of the event.
 13 **Q. Are you aware that the details in**
 14 **late 2004 numbered in excess of 700 officers?**
 15 A. It may have depending on the 15:27:47
 16 nature of the anticipated event.
 17 **Q. Can you estimate the cost of**
 18 **fielding a detail of 700 officers?**
 19 MR. MUSCHENHEIM: Objection.
 20 A. It is an expensive undertaking. 15:28:04
 21 **Q. Understanding that you likely**
 22 **can't provide a precise figure, can you give**
 23 **an estimate?**
 24 A. No, I can't because some of those
 25 officers would be on overtime and some 15:28:18
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1 Kelly
 2 probably, most would not.
 3 MR. MUSCHENHEIM: Objection.
 4 **Q. Have you ever been advised of the**
 5 **costs to the department associated with 15:28:33**
 6 **fielding details at Manhattan Critical Mass**
 7 **rides?**
 8 A. No.
 9 **Q. Do you have any information or**
 10 **understanding with respect to the general 15:28:44**
 11 **magnitude of the department's costs associated**
 12 **with policing Critical Mass rides?**
 13 MR. MUSCHENHEIM: Objection.
 14 A. In a general sense I have an
 15 understanding of what it costs to field 15:28:59
 16 details for a variety of events.
 17 **Q. And based on that understanding**
 18 **can you provide a rough estimate of the costs**
 19 **of fielding a 700 person Critical Mass detail?**
 20 MR. MUSCHENHEIM: Objection. 15:29:17
 21 A. No, I can't give you a number
 22 because it depends on the day of the week. It
 23 depends on availability. It depends on how
 24 many officers are on overtime. It is
 25 conceivable that you have no officers on 15:29:34
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1 Kelly
 2 overtime.
 3 **Q. Can you give a range of costs --**
 4 A. I wouldn't be able to give you a
 5 number. 15:29:43
 6 **Q. Would you also not be able to give**
 7 **a range of costs associated?**
 8 A. I would not based on the reason
 9 that I mentioned to you. There is a whole
 10 host of variables that comes into play when 15:29:53
 11 you are trying to estimate the cost of
 12 policing any event.
 13 **Q. I show you an exhibit that has**
 14 **been marked as Kelly Exhibit 3. For the**
 15 **record its an excerpt from The Daily News, 15:30:21**
 16 **Thursday, October 28, 2004, that includes an**
 17 **Op-Ed publication by Police Commissioner**
 18 **Raymond W. Kelly.**
 19 **(Kelly Exhibit 3, excerpt from The**
 20 **Daily News, Thursday, October 28, 2004, 15:30:27**
 21 **Op-Ed publication by Police Commissioner**
 22 **Raymond W. Kelly, marked for**
 23 **identification, as of this date.)**
 24 **Q. Do you recall authorizing the**
 25 **publication of this Op-Ed? 15:30:52**
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1 Kelly
 2 A. Yes.
 3 **Q. Do you recall the process that was**
 4 **used to draft this Op-Ed?**
 5 A. Yes. 15:31:00
 6 **Q. What was the process?**
 7 A. The process of most Op-Ed's is
 8 that a draft would be developed by some member
 9 of my staff, most likely Paul Browne. And I
 10 would read it, make comments, edits, changes 15:31:13
 11 perhaps, perhaps no change for an Op-Ed and
 12 then it would go forward.
 13 **Q. Was that the process used to**
 14 **prepare this particular Op-Ed?**
 15 A. Best of my recollection, yes. 15:31:27
 16 **Q. Do you recall editing a draft of**
 17 **this Op-Ed?**
 18 A. Most likely.
 19 **Q. Is your testimony that you most**
 20 **likely edited a draft of the Op-Ed or that 15:31:42**
 21 **most likely you recall that you --**
 22 A. No. I most likely edited the
 23 draft, I can't say specifically. This may
 24 have been unchanged by me or it may have been
 25 changed or altered. It may have been 15:31:57
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1 Kelly
 2 additions, subtractions, I don't recall.
 3 **Q. You have no specific recollection**
 4 **of making any particular edits to a draft of**
 5 **this Op-Ed? 15:32:09**
 6 A. No, not specifically.
 7 **Q. Do you recall participating in the**
 8 **drafting of the title of this Op-Ed which is:**
 9 **Extremist Have Hijacked the Bike Rides?**
 10 A. I don't recall if we drafted this 15:32:28
 11 title or not. Oftentimes the headlines are
 12 developed by the newspapers themselves.
 13 **Q. Is it the case that the third**
 14 **paragraph of the Op-Ed refers to the rides**
 15 **were hijacked by groups of cyclists intent on 15:32:47**
 16 **disruption and on violating the law. Do you**
 17 **see that?**
 18 A. Yes.
 19 **Q. So the concept of hijacking is one**
 20 **that was put forward by you in this Op-Ed; is 15:33:09**
 21 **that correct?**
 22 A. That is correct.
 23 MR. MUSCHENHEIM: Objection..
 24 **Q. And you can't recall whether you**
 25 **proposed the use of the term extremists in the 15:33:19**
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1 Kelly
 2 **title?**
 3 MR. MUSCHENHEIM: Objection.
 4 A. I don't recall specifically, but
 5 I -- in the title, but it is in the text. 15:33:29
 6 **Q. Thank you.**
 7 **And this was published**
 8 **approximately three years and one month after**
 9 **the September 11th terrorist attacks on the**
 10 **World Trade Center? 15:33:46**
 11 A. Yes.
 12 **Q. Did it occur to you when you were**
 13 **drafting this Op-Ed that describing bicyclists**
 14 **as extremists and hijackers was a way of**
 15 **signaling that they were terrorists of some 15:34:03**
 16 **kind?**
 17 MR. MUSCHENHEIM: Objection.
 18 A. No.
 19 **Q. Looking at the fourth paragraph**
 20 **down in the Op-Ed it states open quote: Where 15:34:18**
 21 **once the cyclist were courteous observers of**
 22 **the rules of the road, the newcomers**
 23 **transformed rides into disruptive, often**
 24 **dangerous events.**
 25 **Do you see that? 15:34:37**
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1 Kelly
 2 A. Yes.
 3 **Q. What was the basis for that**
 4 **statement?**
 5 A. Well, reports from staff, and if 15:34:42
 6 you look at the next paragraph down you see
 7 the statement: Hundreds of cyclists entering
 8 the lower portion of the northbound FDR Drive
 9 en masse and at night. They posed a real
 10 danger to themselves and to the motorists 15:34:58
 11 trying to dodge them. Fortunately through
 12 police action and sheer luck no one was
 13 injured that night.
 14 **Q. Did the paragraph you just read**
 15 **shed any light on the source of information 15:35:08**
 16 **for the assertion that the Critical Mass**
 17 **cyclists were once courteous observers of the**
 18 **rules of the road?**
 19 A.. That paragraph?
 20 **Q. The one that you just read? 15:35:20**
 21 A. Did it shed light on them being
 22 courteous observers?
 23 MR. MUSCHENHEIM: Objection.
 24 **Q. That is my question?**
 25 A.. No. The question, courteous 15:35:31
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1 Kelly
 2 **observers, the question had to do with the**
 3 **whole paragraph and it said the newcomers**
 4 **transformed rides into disruptive, often**
 5 **dangerous events. That was an example of a 15:35:43**
 6 **dangerous disruptive event.**
 7 **Q. What specific information can you**
 8 **give me regarding the assertions that once the**
 9 **cyclists were courteous observers of the rules**
 10 **of the road? 15:35:56**
 11 A. Anecdotal information.
 12 **Q. Can you describe that information?**
 13 A. In essence what it said here, that
 14 there was cooperation years before among the
 15 riders and the police, telling the police 15:36:15
 16 where they were going to go, and the police
 17 would facilitate those rides.
 18 **Q. And what is your understanding of**
 19 **the time period during which the rides are**
 20 **conducted in the manner that you just 15:36:32**
 21 **described?**
 22 A. Sometime in 2002, that timeframe,
 23 perhaps 2003, I am not certain.
 24 **Q. What was your understanding at the**
 25 **time that you wrote this Op-Ed of the time 15:36:52**
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1 Kelly
 2 **period during which the transformation that**
 3 **you referred to occurred?**
 4 MR. MUSCHENHEIM: Objection. You
 5 can answer. 15:37:03
 6 A. Well, obviously in 2004. I
 7 believe the transformation may have taken
 8 place earlier than that.
 9 **Q. Can you name any specific member**
 10 **of your staff who provided you with 15:37:24**
 11 **information regarding the cyclists having been**
 12 **at one time courteous observers of the rules**
 13 **of the road?**
 14 A. Not specifically.
 15 **Q. Can you name any individual who 15:37:38**
 16 **based on personal knowledge could state that**
 17 **in fact the Critical Mass bicyclists were in**
 18 **this time period courteous observers of the**
 19 **rules of the road?**
 20 A. Not specifically. 15:37:56
 21 **Q. Was Deputy Commissioner Browne the**
 22 **only source of information you had that the**
 23 **bicyclists had once been courteous observers**
 24 **of the rules of the road when you authorized**
 25 **this Op-Ed? 15:38:17**
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1 Kelly
 2 MR. MUSCHENHEIM: Objection.
 3 A. No.
 4 **Q. Can you name a single other?**
 5 MR. MUSCHENHEIM: Objection. 15:38:22
 6 Asked and answered.
 7 A. Staff members.
 8 **Q. But you can't name another**
 9 **specific staff member?**
 10 MR. MUSCHENHEIM: Objection. 15:38:27
 11 A. Other members of the staff who
 12 were out in the field who made these
 13 observations.
 14 **Q. You believe that the source of**
 15 **information underlying the assertion that once 15:38:36**
 16 **the cyclists were courteous observers of the**
 17 **rules of the road are the personal**
 18 **observations of NYPD officers who observed the**
 19 **rides?**
 20 A. Yes. 15:38:49
 21 **Q. What leads you to believe that**
 22 **that information was based on personal**
 23 **observations?**
 24 A. Anecdotal information.
 25 **Q. But you can't point to any 15:39:03**
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1 Kelly
 2 specific communication that is the basis of
 3 your belief?
 4 MR. MUSCHENHEIM: Objection.
 5 Asked and answered. 15:39:15
 6 A. No.
 7 Q. I will show you an exhibit marked
 8 as Kelly Exhibit 4. This document was
 9 produced by the city. Unfortunately it is not
 10 fully legible. We have put behind it a 15:39:46
 11 photocopy of the clipping, a Lexis printout of
 12 the text if there is any question as to
 13 reading.
 14 (Kelly Exhibit 4, New York Post
 15 Op-Ed by Ray Kelly published July 21, 15:40:10
 16 2006, marked for identification, as
 17 of this date.)
 18 Q. For the record this is a New York
 19 Post, I believe it is also an Op-Ed by Ray
 20 Kelly published July 21, 2006. 15:40:13
 21 Commissioner, I will draw your
 22 attention to the second column of the clipping
 23 version of the article. At the very bottom of
 24 the second column do you see the carry over
 25 sentence that reads: But beginning a few 15:40:45
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1 Kelly
 2 months before the 2004 Republican National
 3 Convention, the rides were hijacked by those
 4 apparently intent on commandeering the streets
 5 for themselves. 15:40:58
 6 Do you see that?
 7 A. Yes.
 8 Q. Do you believe that was accurate
 9 when you wrote it?
 10 A. Yes. 15:41:16
 11 Q. Does this refresh your
 12 recollection of when the purported hijacking
 13 of the Critical Mass rides took place?
 14 A. Yes.
 15 Q. It was a few months before the 15:41:27
 16 2004 Republican National Convention?
 17 A. Yes.
 18 Q. Do you have any information as to
 19 when the purported hijacking occurred that you
 20 gathered since the publication of this 2006 15:41:37
 21 Op-Ed?
 22 A. Read that back, please.
 23 (Record read.)
 24 A. No.
 25 MR. VACCARO: We will take a short 15:42:16
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1 Kelly
 2 break to change the tape.
 3 THE VIDEOGRAPHER: That is the end
 4 of tape number 1, the time is 3:42 p.m.,
 5 we are now off the record. 15:42:24
 6 (Recess taken.)
 7 THE VIDEOGRAPHER: This is the
 8 start of the tape labelled number 2. The
 9 time is now 4:01, we are back on the
 10 record. 16:01:01
 11 Q. Commissioner, in both of your
 12 Op-Ed's marked Kelly 2 and Kelly 4 you refer
 13 to a hijacking of the Critical Mass rides; is
 14 that right?
 15 MR. MUSCHENHEIM: Kelly 3 and 16:01:11
 16 Kelly 4.
 17 MR. VACCARO: Thank you. I will
 18 take your correction.
 19 Q. Is that just a metaphor?
 20 MR. MUSCHENHEIM: Objection. 16:01:29
 21 A. It is my understanding that a
 22 group of individuals seem to get involved with
 23 the Critical Mass and take them on a route
 24 that led to not working with the police.
 25 Q. Did you receive specific 16:01:49
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1 Kelly
 2 information regarding the identity of any of
 3 these individuals?
 4 A. Did I; no.
 5 Q.. Did the department? 16:01:59
 6 A. I am not certain.
 7 Q. Did the department attempt to
 8 determine the identity of the individuals who
 9 you believe hijacked the Critical Mass ride?
 10 A. Perhaps. 16:02:11
 11 Q. Do you have any information
 12 obtained through any investigation of the
 13 identities of the individuals you believe
 14 hijacked the Critical Mass ride?
 15 A. No. 16:02:27
 16 Q. Who at the NYPD do you believe has
 17 that information?
 18 A. I am not certain that we have the
 19 information, but I believe it may have been an
 20 effort to identify people, either perhaps 16:02:36
 21 through the intelligence division or Manhattan
 22 South.
 23 Q. What specific individuals
 24 undertook that effort?
 25 A. I am not certain.. 16:02:50
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1 Kelly
 2 **Q. Who would know?**
 3 A. Perhaps Chief Tuller.
 4 Q.. Do you believe that he was
 5 involved in making the decision to undertake 16:03:00
 6 that investigation?
 7 A. I don't know.
 8 **Q. Why do you name him?**
 9 A. He is the commanding officer of
 10 Manhattan South where the rides emanated. 16:03:11
 11 **Q. Was he commanding officer of**
 12 **Manhattan South at the time of this effort to**
 13 **determine who you believed hijacked the**
 14 **ride?**
 15 A. It may have been Chief Smolka. 16:03:26
 16 **Q. If Chief Tuller was not commanding**
 17 **officer of Manhattan South at the time of the**
 18 **effort to find the purported hijackers then do**
 19 **you have any information to believe that he**
 20 **would have information regarding that effort?** 16:03:44
 21 A. He might.
 22 **Q. Do you have any reason to believe**
 23 **that he would have that information?**
 24 A. I have no specific reason to
 25 believe. 16:03:53
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1 Kelly
 2 **Q. Do you believe that the purported**
 3 **hijackers are the ones responsible for the**
 4 **refusal of Critical Mass bicyclists to accept**
 5 **a fixed route for their ride?** 16:04:11
 6 A. Its possible.
 7 **Q. Do you before that before the**
 8 **purported hijacking the Critical Mass**
 9 **bicyclists accepted a fixed route for their**
 10 **ride?** 16:04:23
 11 A. It is my understanding that they
 12 would -- sometime prior to the events that we
 13 are talking about, 2004, worked with the
 14 police to tell them the route that they were
 15 taking, and the police would work with them to 16:04:38
 16 facilitate the ride.
 17 **Q. Do you believe that the purported**
 18 **hijackers you talk about in these Op-Ed's**
 19 **continue to or continued to control Critical**
 20 **Mass after the RNC?** 16:04:53
 21 MR. MUSCHENHEIM: Objection.
 22 A. Its possible.
 23 **Q. But you don't have a belief one**
 24 **way or the other?**
 25 A. I don't have specific information. 16:05:04
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1 Kelly
 2 **Q. Did the department attempt to**
 3 **gather information as to whether the purported**
 4 **hijackers continued to control Critical Mass**
 5 **after the RNC?** 16:05:16
 6 A. I am not certain.
 7 MR. MUSCHENHEIM: Hold on. I
 8 don't want you to reveal any law
 9 enforcement information that may or may
 10 not have been obtained from law 16:05:27
 11 enforcement, that is protected from
 12 disclosure by law enforcement privilege.
 13 Q.. Do you have an understanding as to
 14 whether any Critical Mass participants who are
 15 not hijackers continue to participate in the 16:05:43
 16 event after the RNC?
 17 A. I assume so.
 18 **Q. Do you know the approximate size**
 19 **of the group of purported hijackers in the**
 20 **Critical Mass ride following the RNC?** 16:05:58
 21 MR. MUSCHENHEIM: Same direction.
 22 Do not reveal any information that is
 23 protected by the law enforcement
 24 privilege.
 25 A. Say again, please. 16:06:11
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1 Kelly
 2 **Q. I withdraw the question.**
 3 **Were you aware that Critical Mass**
 4 **rides held in September, October and November**
 5 **of 2004 included in excess of 1,000** 16:06:22
 6 **participants?**
 7 A. Possible.
 8 **Q. In a ride of 1,000 Critical Mass**
 9 **participants occurring in the fall of 2004 how**
 10 **many hijackers were involved in those rides?** 16:06:38
 11 MR. MUSCHENHEIM: Same direction.
 12 Do not reveal any information that is
 13 protected by the law enforcement
 14 privilege?
 15 A. I don't know. 16:06:51
 16 **Q. Was it ten?**
 17 MR. MUSCHENHEIM: Same direction.
 18 A. I don't know.
 19 **Q. Do you believe at the present day**
 20 **there are any hijackers still participating in** 16:07:02
 21 **Critical Mass bicycle rides?**
 22 MR. MUSCHENHEIM: Same direction.
 23 A. Possibly.
 24 **Q. Do you believe that there are any**
 25 **non-hijackers participating in Critical Mass** 16:07:14
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1 Kelly
 2 bicycle rides at the present day?
 3 A. Yes.
 4 Q. What is the department's strategy
 5 for managing the Critical Mass rides in a 16:07:30
 6 manner that protects the rights of the
 7 non-hijackers participating in the Critical
 8 Mass rides?
 9 MR. MUSCHENHEIM: Objection as to
 10 the form of the question. Can you repeat 16:07:44
 11 that, please; at this time.
 12 MR. VACCARO: Yes.
 13 (Record read.)
 14 A. Our strategy has been consistent
 15 in that we devote sufficient resources to 16:08:21
 16 protect the public and to the best we can
 17 protect the riders from injury.
 18 Q. Can you cite any specific evidence
 19 that tends to show that hijackers took control
 20 of the Critical Mass ride at any time? 16:08:52
 21 A. No.
 22 MR. MUSCHENHEIM: Same direction.
 23 Just give me a moment to object.
 24 Q. So what is the basis of your
 25 belief that there were in fact purported 16:09:05
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1 Kelly
 2 hijackers of the Critical Mass bicycle ride?
 3 MR. MUSCHENHEIM: Same direction.
 4 Do not reveal any information protected
 5 by the law enforcement privilege. 16:09:16
 6 A. Reports from members of my staff.
 7 Q. What are the nature of those
 8 reports?
 9 A. That the group of individuals that
 10 changed the nature and the tenor of the 16:09:33
 11 Critical Mass rides from one of cooperation
 12 with the police to an event where there is no
 13 cooperation with the department, and events
 14 that can create chaotic situations in the
 15 city. 16:10:00
 16 Q. Are you aware that there have been
 17 monthly Critical Mass group bicycle rides held
 18 in Brooklyn?
 19 A. Yes.
 20 Q. Where did you learn that? 16:10:23
 21 A. I am not certain.
 22 Q. From whom did you learn that?
 23 A. I am not certain.
 24 Q. When did you learn it?
 25 A. I am not certain. 16:10:32
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1 Kelly
 2 Q. What do you know about the
 3 Brooklyn Critical Mass bicycle ride?
 4 A. That it is generally smaller than
 5 the ones that occur in Manhattan. That I 16:10:39
 6 think they form at Grand Army Plaza. And that
 7 they are generally peaceful, orderly events.
 8 Q. Do you know whether they follow a
 9 predetermined route?
 10 A. I am not certain. 16:10:56
 11 Q. Do you know whether they exceed 50
 12 individual participants at any time?
 13 A. I am not certain.
 14 Q. Have you heard of any arrests or
 15 summoning activity associated with Brooklyn 16:11:14
 16 Critical Mass ride?
 17 A. Its possible. I don't recall.
 18 Q. Do you recall that NYPD attempted
 19 twice to obtain an injunction against the
 20 Manhattan Critical Mass ride? 16:11:40
 21 A. Yes.
 22 Q. And do you recall the Federal
 23 judge who heard the first application in the
 24 Bray case specifically finding that prior to
 25 July 2004 Manhattan Critical Mass engaged in 16:11:57
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1 Kelly
 2 similar conduct than that cited as evidence of
 3 hijacking in your Op-Ed's?
 4 MR. MUSCHENHEIM: Objection to the
 5 form. Can you repeat that question. 16:12:15
 6 (Record read.)
 7 A. I am still not understanding the
 8 question. But I didn't read the decision.
 9 Q. Okay, let's take a moment, I will
 10 give you a copy of the decision that has been 16:13:07
 11 marked as Kelly Exhibit 8. I will direct your
 12 attention to the bottom of the first column on
 13 page 6, I am referring to the pagination in
 14 the upper right-hand corner of the document.
 15 I will just read this passage from 16:13:30
 16 the court's findings. I will omit the
 17 citations to the record, I think they are
 18 unnecessary.
 19 (Kelly Exhibit 8, court decision,
 20 marked for identification, as of this 16:13:10
 21 date.)
 22 It reads open quote, for example,
 23 three times --
 24 A. Where are you reading from?
 25 Q. I am reading starting at the 16:13:48
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1 Kelly
 2 bottom of the first column, the paragraph that
 3 carries over, the second sentence --
 4 A. What page?
 5 Q. Page 6 in the upper right-hand 16:14:05
 6 corner.. Then --
 7 A. It says police officers?
 8 Q. No. This is page 6 in the upper
 9 right-hand corner, it is the -- okay. It is
 10 the sentence that immediately precedes the one 16:14:23
 11 beginning with police officers from the bottom
 12 of the prior column, and it reads for example,
 13 do you see the sentence that begins with for
 14 example?
 15 A. I do, but I would like to read the 16:14:38
 16 sentence before.
 17 Q. Open quote: For example, three
 18 times prior to July 2004, Critical Mass
 19 participants road down West Street through the
 20 Battery Park Tunnel and on to the FDR Drive. 16:14:59
 21 On two of those occasions the cyclists
 22 proceeded over the Brooklyn and Manhattan
 23 Bridges. Police officers monitoring these
 24 rides did not punish these clear traffic
 25 violations. Moreover, police officers have 16:15:15
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1 Kelly
 2 facilitated Critical Mass rides by corking
 3 intersections to allow bicyclists to proceed
 4 without interruption from cross-town traffic.
 5 Police officers have also ushered Critical 16:15:33
 6 Mass riders through red lights. After
 7 allowing Critical Mass rides in Manhattan for
 8 ten years without permits and in a manner that
 9 the city contends violates the vehicle and
 10 traffic law, the Police Department has 16:15:48
 11 acquiesced to the very conduct it now seeks to
 12 prohibit. Close quote.
 13 Was it brought to your attention,
 14 Commissioner Kelly, that the court in Bray had
 15 made these findings? 16:16:04
 16 A. No.
 17 Q. Do you believe these findings are
 18 in error?
 19 A. I have no reason to believe that
 20 they are in error. 16:16:13
 21 Q. Do you know whether the city
 22 sought an appeal from the decision that I was
 23 just reading from?
 24 A. I believe they did not.
 25 Q. Do you know that NYPD officers who 16:16:20
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1 Kelly
 2 have been assigned to Critical Mass details in
 3 2003 and early 2004 have given testimony in
 4 this matter that is consistent with the
 5 portion of Judge Pauley's decision that I just 16:16:37
 6 read?
 7 MR. MUSCHENHEIM: Objection.
 8 A. I accept your statement.
 9 Q. Is Judge Pauley's findings
 10 consistent with your view that the ride was 16:16:54
 11 suddenly hijacked in 2004?
 12 MR. MUSCHENHEIM: Objection.
 13 A. He is not talking about 2004 here,
 14 is he; you are talking about prior to July of
 15 2004. 16:17:10
 16 Q. That is correct. When do you
 17 believe these events took place that are
 18 described by Judge Pauley?
 19 A. Prior to July of 2004.
 20 Q. Did you know that some of them 16:17:23
 21 occurred in 2003?
 22 MR. MUSCHENHEIM: Objection as to
 23 the characterization.
 24 A. Okay.
 25 Q. Your accepting that some of these 16:17:35
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1 Kelly
 2 events such as riding down West Street through
 3 the Battery Park Tunnel and on to the FDR
 4 Drive occurred in 2003?
 5 A. It may well have. 16:17:47
 6 Q. Do you see that the last sentence
 7 that I read from Judge Pauley's decision
 8 refers to allowing Critical Mass rides in
 9 Manhattan for ten years without permits and in
 10 a manner that the city contends violates the 16:17:58
 11 Vehicle and Traffic Law, do you see that
 12 reference?
 13 A. Yes.
 14 Q. So do you take this portion of the
 15 decision to be alluding to events that 16:18:06
 16 occurred only in mid 2004?
 17 MR. MUSCHENHEIM: Objection.
 18 A. I believe what is being said here
 19 is that there was cooperation among the riders
 20 and the police officers which is what we have 16:18:22
 21 been striving for all along.
 22 Q. So your understanding --
 23 A. There was cooperation between the
 24 Critical Mass participants and the officers
 25 that were monitoring it. 16:18:36
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1 Kelly

2 **Q. And there was cooperation with**

3 **respect to the Critical Mass bicyclists**

4 **entering the FDR Drive?**

5 MR. MUSCHENHEIM: Objection. 16:18:14

6 A. Well, I am not certain about that.

7 **Q. Was there cooperation with respect**

8 **to riding over the portion of the Brooklyn**

9 **Bridge on which motor vehicles are permitted?**

10 A. I don't know. I don't know how 16:18:54

11 many officers were there and what else they

12 were doing, difficult to say. I did see,

13 which I wrote about in my Op-Ed piece,

14 significant numbers of riders on the FDR

15 Drive, that was in July of 2004. We are 16:19:10

16 talking about something prior to that where

17 they were on the FDR Drive and going over the

18 bridge, going through the tunnel.

19 **Q. Yes, three separate occasions**

20 **prior to July 2004 when the Critical Mass 16:19:26**

21 **participants road down West Street through the**

22 **Battery Park Tunnel and on to the FDR Drive**

23 **according to Judge Pauley's decision?**

24 MR. MUSCHENHEIM: Is there a

25 question pending? 16:19:40

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1 Kelly

2 **Q. Were you aware that there had been**

3 **multiple rides on the FDR Drive by the**

4 **Critical Mass bicyclists with NYPD presence**

5 **prior to July of 2004? 16:19:52**

6 A. No.

7 **Q. Is that a fact of which you should**

8 **have been made aware?**

9 MR. MUSCHENHEIM: Objection.

10 A. Not necessarily. 16:20:02

11 **Q. Do you know whether there was a**

12 **permit issued for the Critical Mass bicyclists**

13 **to proceed on the FDR Drive on three occasions**

14 **prior to July of 2004?**

15 A. I do not. 16:20:18

16 **Q. Do you know whether on each of**

17 **those three prior occasions the bicyclists**

18 **told the officers they were going to proceed**

19 **on the FDR Drive?**

20 A. I don't know. 16:20:26

21 **Q. Do you perceive the Critical Mass**

22 **bicyclists proceeding on the FDR Drive in July**

23 **of 2004 as an unusual event?**

24 MR. MUSCHENHEIM: Objection as to

25 the form. 16:20:50

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1 Kelly

2 A. Yes.

3 **Q. And in fact you have noted it as**

4 **such in your Op-Ed piece; correct?**

5 A. Yes. 16:20:59

6 **Q. And why was it unusual if Critical**

7 **Mass bicyclists had proceeded on three prior**

8 **occasions on the FDR Drive?**

9 MR. MUSCHENHEIM: Objection.

10 A. I don't know the number of people 16:21:08

11 in this ride, but I do know that the one that

12 was filmed that I saw had a significant number

13 of riders endangering both the riders and

14 people riding cars on the FDR Drive. It

15 seemed reckless to me. 16:21:25

16 **Q. What size of group bicycle ride**

17 **can proceed on the FDR Drive without a permit**

18 **and without notifying the NYPD in advance of**

19 **their intention to do so without causing those**

20 **problems? 16:21:44**

21 MR. MUSCHENHEIM: Objection. You

22 may answer.

23 A. I think it is a common sense

24 determination. I think riding on a bicycle on

25 the roadway of the FDR Drive is -- because of 16:21:58

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1 Kelly

2 the speed of the vehicles in and of itself is

3 dangerous undertaking. I think a significant

4 number of riders would make it hazardous both

5 for those riders and for the drivers trying to 16:22:14

6 avoid them.

7 **Q. Well, if 300 Critical Mass**

8 **bicyclists prior to July of 2004 entered on to**

9 **the FDR Drive would that create a safety**

10 **hazard? 16:22:29**

11 MR. MUSCHENHEIM: Objection.

12 A. Probably.

13 **Q. Would that be an unusual event?**

14 MR. MUSCHENHEIM: Objection.

15 A. Probably. 16:22:33

16 **Q. Would that be evidence of**

17 **hijacking?**

18 MR. MUSCHENHEIM: Objection.

19 A. I don't know what the motivation

20 was to do that. 16:22:39

21 **Q. What was the motivation of the**

22 **purported hijacking that you referred to in**

23 **your Op-Ed's?**

24 A. I don't know what the motivation

25 was. 16:22:52

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1 Kelly
 2 **Q. Are you aware that routinely prior**
 3 **to July 2004 NYPD officers would allow the**
 4 **Critical Mass bicyclists to proceed curb to**
 5 **curb? 16:23:15**
 6 MR. MUSCHENHEIM: Objection to the
 7 form.
 8 A. I am assuming that if they worked
 9 out an agreement with the officers and the
 10 condition was such that they could do that, it 16:23:25
 11 wouldn't surprise me.
 12 **Q. Do you have any specific evidence**
 13 **that any such agreement was worked out?**
 14 A. Was what, worked out?
 15 **Q. Worked out? 16:23:38**
 16 A. I have no specific knowledge.
 17 **Q. And do you believe there is**
 18 **someone on the police force who does have**
 19 **specific knowledge of that matter?**
 20 A. I am not certain. 16:23:47
 21 **Q. Can you cite a single source as a**
 22 **basis for your understanding that there was an**
 23 **arrangement between the police officers and**
 24 **the Critical Mass bicyclists in which there**
 25 **was permission given to proceed curb to curb 16:24:01**
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1 Kelly
 2 **on one-way streets?**
 3 A. No.
 4 **Q. Are you aware that prior to July**
 5 **of 2004 the Critical Mass bicyclists were 16:24:08**
 6 **permitted by the NYPD officers to cork**
 7 **intersections?**
 8 A. To do what, sorry?
 9 **Q. To cork intersections?**
 10 A. I will accept your statement. 16:24:18
 11 **Q. Well, isn't that statement**
 12 **inconsistent with your Op-Ed piece which**
 13 **strongly suggests that such corking occurred**
 14 **only after the purported hijacking?**
 15 MR. MUSCHENHEIM: Objection. 16:24:35
 16 A. If that is your understanding of
 17 the statement, it doesn't necessarily mean
 18 that it was happening only after the events
 19 that I write about in the Op-Ed piece.
 20 **Q. Do you have any reason to doubt 16:24:50**
 21 **the sworn testimony of a NYPD officer who was**
 22 **assigned to multiple Critical Mass rides**
 23 **starting in October of 2003 through to 2004**
 24 **that it was the policy of NYPD to allow the**
 25 **bicyclists to cork intersections on those 16:25:05**
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1 Kelly
 2 **rides?**
 3 MR. MUSCHENHEIM: Objection as to
 4 the characterization.
 5 A. No. 16:25:09
 6 **Q. And are you aware that the**
 7 **officers on those rides starting with --**
 8 **withdrawn.**
 9 **Are you aware that on the pre July**
 10 **2004 rides the officers would block traffic 16:25:23**
 11 **while the bicyclists would stop, remain**
 12 **stationary in the roadway and lift their bikes**
 13 **above their heads for a few minutes?**
 14 A. I am sorry, say it again.
 15 **Q. Withdraw it. 16:25:39**
 16 **Have you ever heard of a bike**
 17 **lift?**
 18 A. No.
 19 **Q. Have you ever heard of an activity**
 20 **by the Critical Mass bicyclists of standing 16:25:48**
 21 **stationary in the roadway and lifting their**
 22 **bicycles for a few minutes?**
 23 A. No.
 24 **Q. Have you ever heard that NYPD**
 25 **officers prior to the RNC would block traffic 16:26:01**
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1 Kelly
 2 **for the bicyclists while they engaged in such**
 3 **activity on Critical Mass rides?**
 4 A. Let me ask you, what is the
 5 purpose of it? 16:26:12
 6 **Q. I am afraid that I can't answer**
 7 **questions at this deposition.**
 8 A. I never heard of it.
 9 **Q. Putting aside whatever the purpose**
 10 **of the activity may be, have you -- 16:26:22**
 11 A. You asked me a question, you know,
 12 the basis of me answering the question, some
 13 knowledge, I don't have that knowledge of any
 14 activity where the riders are lifting their
 15 bikes. 16:26:37
 16 **Q. Is there anything cited in your**
 17 **Op-Ed piece of 2004 that occurred --**
 18 **withdrawn.**
 19 **Is there any activity by Critical**
 20 **Mass bicyclists cited in your 2004 Op-Ed piece 16:27:06**
 21 **that you know for a fact did not occur in**
 22 **prior Critical Mass rides?**
 23 MR. MUSCHENHEIM: Objection.
 24 A. Say that again, please.
 25 (Record read.) 16:27:32
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1 Kelly

2 Q. In prior Critical Mass rides?

3 A. My belief that they did not.

4 Q. Which are the activities cited in
5 your 2004 Op-Ed piece that you believe did not 16:27:49
6 take place prior to the July 30, 2004 Critical
7 Mass ride?

8 A. That is correct.

9 Q. Can I have a read back on the
10 question. 16:28:07

11 A. I am sorry, I didn't understand
12 the question.

13 (Record read.)

14 A. I did not believe that they road
15 in significant numbers on the FDR Drive. 16:28:36

16 Q. When you say significant numbers,
17 do you mean hundreds?

18 A. Yes.

19 Q. There is also reference in your
20 2004 Op-Ed piece to groups of cyclists sending 16:28:50
21 teams ahead to cork or block side streets with
22 bicycles so that the larger groups could run
23 red lines without encountering cross town
24 traffic.

25 Is that activity that you believe 16:29:10

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1 Kelly

2 did not occur prior to the July 2004 Critical
3 Mass ride?

4 A. It may very well have occurred,
5 but again I believe that it was an 16:29:21
6 understanding or cooperative arrangement with
7 the police in many instances.

8 Q. Isn't the notion that there was a
9 hijacking of the Critical Mass ride in the
10 months leading up to the RNC a fairytale? 16:29:45

11 MR. MUSCHENHEIM: Objection.

12 A. Say again, please.

13 Q. Can I have a read back.
14 (Record read.)

15 A. No. 16:30:10

16 Q. Can you cite any specific piece of
17 evidence, conversation you had with a specific
18 person or anything else concrete that
19 underlies your belief that the conduct of ride
20 participants suddenly and materially changed 16:30:26
21 in mid 2004?

22 A. Information from staff members.

23 Q. But you can't cite a specific
24 staff member?

25 A. No. It is five years after the 16:30:39

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1 Kelly

2 event, or almost five years after the event, I
3 cannot.

4 Q. Does it surprise you that in
5 depositing ten or more NYPD individuals who have 16:30:49
6 been involved in the Critical Mass rides over
7 the years that we have been unable to learn
8 the name of a single individual who can give
9 specific testimony regarding these
10 arrangements that you believe existed prior to 16:31:04
11 mid 2004?

12 MR. MUSCHENHEIM: Objection as to
13 the characterization. Can we have a read
14 back, please.

15 (Record read.) 16:31:15

16 A. No.

17 Q. Is it your belief that at present
18 participants in Manhattan Critical Mass rides
19 have a greater propensity to violate the
20 traffic laws compared to other New York City 16:32:00
21 bicyclists?

22 MR. MUSCHENHEIM: Objection to the
23 form, you can answer.

24 A. No.

25 Q. You believe -- withdrawn. 16:32:10

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1 Kelly

2 If that is the case then why are
3 there such extraordinary resources devoted to
4 enforcing the law against Critical Mass?

5 MR. MUSCHENHEIM: Objection. 16:32:20
6 A. Because of the number of
7 participants.

8 Q. Do you know --

9 A. The concentration of the
10 participants. 16:32:29

11 Q. Do you receive reports as to the
12 size or the concentration of participants
13 periodically?

14 A. Sometimes.

15 Q. Do you know for example the size, 16:32:40
16 approximate size of any Critical Mass ride
17 held within the last year?

18 A. Not that I recall.

19 Q. Do you know whether rides in the
20 last year have exceeded 1,000 participants? 16:32:54

21 A. I believe that would be high.

22 Q. What is your general understanding
23 of the size of the Manhattan Critical Mass
24 rides over the last year?

25 MR. MUSCHENHEIM: Objection. 16:33:09

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1 Kelly
 2 A. It varies.
 3 **Q. Can you give a range of number of**
 4 **participants for Critical Mass rides over the**
 5 **last year? 16:33:19**
 6 A. I would say the number would be up
 7 to 200.
 8 **Q. Are you aware that there have been**
 9 **rides that have -- withdrawn.**
 10 **Are you aware that within the last 16:33:34**
 11 **year there have been Manhattan Critical Mass**
 12 **rides with fewer than 50 participants?**
 13 A. I would say the number would be up
 14 to 200. That would fall into 50.
 15 **Q. But are you specifically aware 16:33:50**
 16 **that there have been rides, Manhattan Critical**
 17 **Mass rides of fewer than 50 individuals over**
 18 **the last year?**
 19 A. In general, yes.
 20 **Q. You believe you have received that 16:34:02**
 21 **information?**
 22 A. In a general sense, yes.
 23 **Q. Well, what would you have been**
 24 **told to have led you to that general**
 25 **understanding? 16:34:18**
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1 Kelly
 2 A. I would have been told that
 3 information.
 4 **Q. So you believe you were told that**
 5 **information? 16:34:22**
 6 A. Most likely.
 7 **Q. Have you been told that on**
 8 **occasion the Critical Mass bicycle ride has**
 9 **not occurred during the last year?**
 10 A. Probably. 16:34:40
 11 **Q. Are you aware that on Brooklyn**
 12 **Critical Mass rides conducted as recently as**
 13 **September of 2007 NYPD officers permitted the**
 14 **bicyclists to cork intersections?**
 15 MR. MUSCHENHEIM: Objection. 16:35:33
 16 A. I am not aware of that. It
 17 wouldn't surprise me if there was a prior
 18 agreement and understanding.
 19 **Q. Is there any departmental policy**
 20 **with respect to the authority of officers on 16:35:48**
 21 **the scene to make an agreement or**
 22 **understanding with demonstrators concerning**
 23 **activities such as corking intersections?**
 24 A. We always want common sense to
 25 prevail. If there is a decision that is going 16:36:08
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1 Kelly
 2 to facilitate the situation or make it more
 3 peaceful event, then that is a decision that
 4 you want to see made.
 5 **Q. So would a sergeant assigned with 16:36:26**
 6 **a group of eight scooter officers to monitor a**
 7 **Brooklyn Critical Mass ride have the authority**
 8 **to allow the bicyclists to cork traffic at**
 9 **intersections?**
 10 MR. MUSCHENHEIM: Objection. 16:36:44
 11 A. Perhaps.
 12 **Q. Are you aware that any NYPD**
 13 **officers have exercised that authority in that**
 14 **fashion in connection with any Brooklyn**
 15 **Critical Mass rides? 16:37:02**
 16 A. I am not specifically aware of it.
 17 **Q. Does NYPD have a uniform policy**
 18 **with respect to Critical Mass rides in**
 19 **Brooklyn and Manhattan?**
 20 MR. MUSCHENHEIM: Objection as to 16:37:16
 21 the form.
 22 A. Policy in what regard?
 23 **Q. Policy with respect to enforcement**
 24 **of the parade rules?**
 25 MR. MUSCHENHEIM: Objection. 16:37:31
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1 Kelly
 2 A. You say the parade rules, you are
 3 talking about the 50 or more participants?
 4 **Q. I am.**
 5 A. A general policy that if there are 16:37:40
 6 50 or more participants we would like to have
 7 a parade permit, yes.
 8 **Q. But are you aware that Brooklyn**
 9 **Critical Mass rides of greater than 50**
 10 **participants have been permitted to proceed 16:37:54**
 11 **without obtaining a permit?**
 12 A. That may be so, I am not
 13 specifically aware of that.
 14 **Q. If that is true do you still**
 15 **contend that there is a uniform policy with 16:38:09**
 16 **respect to parade permits?**
 17 MR. MUSCHENHEIM: Objection.
 18 A. I don't know if I would use the
 19 word uniform. I don't believe I did.
 20 **Q. Is it consistent with your 16:38:22**
 21 **understanding of the NYPD's policy regarding**
 22 **enforcement of the parade rules that 50 plus**
 23 **person Brooklyn Critical Mass rides are**
 24 **permitted to proceed without a permit?**
 25 MR. MUSCHENHEIM: Could you repeat 16:38:43
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1 Kelly
 2 that, please.
 3 (Record read.)
 4 A. It doesn't surprise me.
 5 **Q. Are you concerned by a situation 16:39:14**
 6 **in which an NYPD sergeant has the discretion**
 7 **to waive enforcement of the parade rules for a**
 8 **group of 50 or more bicyclists?**
 9 MR. MUSCHENHEIM: Objection.
 10 A. No. 16:39:43
 11 **Q. Do the officers assigned to the**
 12 **Manhattan Critical Mass rides have the**
 13 **authority to waive application of the parade**
 14 **rules?**
 15 A. Again we want common sense to 16:39:57
 16 prevail. We give latitude to the Incident
 17 Commander to make on the scene decisions.
 18 **Q. Are you aware that it is a common**
 19 **practice at Manhattan Critical Mass rides for**
 20 **pairs of scooter mounted officers to follow 16:40:21**
 21 **groups of bicyclists as small as five that**
 22 **they find proceeding in Manhattan South?**
 23 MR. MUSCHENHEIM: Objection to the
 24 characterization.
 25 A. No. 16:40:35
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1 Kelly
 2 **Q. Would such a practice concern you?**
 3 MR. MUSCHENHEIM: Objection.
 4 A. I would have to know all the
 5 circumstances. 16:40:44
 6 **Q. Are you aware of testimony in this**
 7 **matter that groups as small as five bicyclists**
 8 **have been pursued from Union Square all the**
 9 **way to their homes by scooter officers in an**
 10 **attempt to ensure they did not assemble with 16:40:59**
 11 **other bicyclists?**
 12 A. No.
 13 MR. MUSCHENHEIM: Objection.
 14 **Q. Do you believe that the Incident**
 15 **Commander of the Critical Mass rides has the 16:41:11**
 16 **authority to authorize that type of**
 17 **surveillance activity?**
 18 MR. MUSCHENHEIM: Objection.
 19 A. Again I would want to know all the
 20 circumstances before I would comment on that. 16:41:25
 21 **Q. Do you believe that there are**
 22 **circumstances in which the Incident Commander**
 23 **would have authority to authorize such**
 24 **surveillance activity?**
 25 MR. MUSCHENHEIM: Objection. 16:41:35
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1 Kelly
 2 A. I would want to know all the
 3 circumstances before I can answer the
 4 question, I don't want to speculate on what
 5 they might be. 16:41:41
 6 **Q. Well, what if the circumstances**
 7 **are that the officers have been told to follow**
 8 **the group of five bicyclists to ensure that**
 9 **they do not assemble at an alternative**
 10 **location with other bicyclists, under those -- 16:42:03**
 11 **would that be an appropriate order?**
 12 MR. MUSCHENHEIM: Objection to the
 13 extent that it is a hypothetical
 14 question.
 15 A. It would depend on the totality of 16:42:18
 16 the circumstances.
 17 **Q. Well, let's take a circumstance**
 18 **where the Critical Mass bicyclists don't ride**
 19 **en masse from Union Square, but simply depart**
 20 **in groups of five or fewer, and NYPD officers 16:42:37**
 21 **then follow these groups as they leave Union**
 22 **Square. Is that activity that you are aware**
 23 **NYPD engages in at Critical Mass rides?**
 24 MR. MUSCHENHEIM: Can you repeat
 25 the question, please. 16:42:55
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1 Kelly
 2 (Record read.)
 3 A. No.
 4 **Q. Are you aware that as they are**
 5 **pursuing or following the groups of five 16:43:40**
 6 **bicyclists that the officers are also applying**
 7 **a zero tolerance law enforcement policy?**
 8 MR. MUSCHENHEIM: Objection.
 9 A. The question is am I aware?
 10 **Q. Yes. 16:43:58**
 11 A. No.
 12 **Q. You have never heard that officers**
 13 **follow small groups of bicyclists to cite them**
 14 **for equipment violations?**
 15 A. No. 16:44:06
 16 **Q. If that was taking place would**
 17 **that be consistent with your view in the Op-Ed**
 18 **that the Critical Mass rides can be achieved**
 19 **in a lawful and celebratory way?**
 20 MR. MUSCHENHEIM: Objection. 16:44:21
 21 A. I believe that Critical Mass rides
 22 can go forward in a lawful and celebratory
 23 manner.
 24 **Q. Can they go forward in a**
 25 **celebratory manner if NYPD officers are being 16:44:33**
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1 Kelly
2 **assigned to follow small groups of bicyclists**
3 **and to cite them for equipment violations such**
4 **as missing headlights or tail lights?**
5 MR. MUSCHENHEIM: Objection. 16:44:46
6 Hypothetical.
7 A. Again that sort of enforcement
8 would depend on the totality of the
9 circumstances. I don't have enough
10 information to make that judgment. Do I 16:44:56
11 believe that Critical Mass events and
12 activities can go forward peacefully with
13 cooperative collaborative relationship with
14 the police; yes, I do.
15 **Q. What would be the conditions that 16:45:14**
16 **would have to occur in order for NYPD to stop**
17 **issuing equipment violations on a zero**
18 **tolerance basis to bicyclists who appear at**
19 **Union Square on the last Friday of the month?**
20 MR. MUSCHENHEIM: Objection. 16:45:36
21 A. Well, I am assuming that the
22 violations that the officers are observing,
23 and they are taking action, your expression is
24 zero tolerance, I don't know if that is the
25 case or not, I have never used that 16:45:59
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1 Kelly
2 expression. But again it depends on the
3 circumstances that exist.
4 But I again believe that a
5 cooperative relationship can be developed in 16:46:14
6 which drivers work with the police, riders
7 work with the police that is done safely.
8 That where there is groups of 50 or more a
9 permit is obtained. Again this to me is total
10 common sense. 16:46:38
11 **Q. Are you aware that there is**
12 **substantial numbers of summonses being issued**
13 **to bicyclists who appear on the last Friday of**
14 **the month at approximately 7 p.m. for**
15 **equipment violations such as missing or 16:46:52**
16 **improperly mounted headlights or tail lights**
17 **or bells?**
18 MR. MUSCHENHEIM: Objection as to
19 the form.
20 A. I accept your statement as being 16:47:02
21 the case.
22 **Q. If that is going on how can a**
23 **cooperative relationship between the**
24 **bicyclists who so appear and are summonsed and**
25 **the police occur? 16:47:14**
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1 Kelly
2 MR. MUSCHENHEIM: Objection.
3 A. I think communication between the
4 leader of the group and the police commanders
5 on the scene as to route, as to having a 16:47:25
6 permit if in fact 50 or more participants, I
7 think all of that would lead to a celebratory
8 peaceful event.
9 **Q. Would NYPD go back to the status**
10 **quo ante in which Critical Mass rides as large 16:47:46**
11 **as several hundred individuals could proceed**
12 **without a parade permit?**
13 MR. MUSCHENHEIM: Objection.
14 A. No, I believe that the law
15 requires that you get a parade permit. 16:47:59
16 **Q. Wasn't it the view of the NYPD**
17 **that the law required a parade permit back in**
18 **2003?**
19 A. I think it has been clarified now
20 with the court decision requiring more 16:48:13
21 specificity and the regulation going forward
22 that 50 or more participants require a permit.
23 **Q. But wasn't it the case back in**
24 **2003 that NYPD viewed the parade rules as**
25 **requiring a permit for group bicycle rides of 16:48:36**
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1 Kelly
2 **50 or more?**
3 A. Perhaps it was, yes.
4 **Q. But that law was not enforced back**
5 **then, was it? 16:48:49**
6 MR. MUSCHENHEIM: Objection.
7 A. It may have not been enforced with
8 consistency.
9 **Q. Can you cite a single instance in**
10 **which the law requiring a permit for a parade 16:48:58**
11 **was enforced against a Critical Mass ride**
12 **prior to August 2004?**
13 A. I am not certain.
14 **Q. Has anyone told you that there was**
15 **such an enforcement action ever taken? 16:49:10**
16 A. I don't recall.
17 **Q. So you have no reason to doubt**
18 **that NYPD did not enforce the parade rules**
19 **prior to -- against Critical Mass prior to**
20 **August of 2004? 16:49:28**
21 MR. MUSCHENHEIM: Objection.
22 A. I accept your statement.
23 **Q. Well, do you have any specific**
24 **reason to believe that the statement is not**
25 **true? 16:49:35**
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1 Kelly
 2 A. No, I said I accept your
 3 statement.
 4 **Q. In fact NYPD twice sought an**
 5 **injunction against Critical Mass on the** 16:49:50
 6 **premise that the parade rules required**
 7 **Critical Mass to obtain a permit in order to**
 8 **proceed; right?**
 9 MR. MUSCHENHEIM: Objection.
 10 A. My understanding, yes. 16:50:02
 11 **Q. It was the failure of NYPD's**
 12 **second attempt to enjoin Critical Mass that**
 13 **led it to seek to modify the parade rules; is**
 14 **that correct?**
 15 MR. MUSCHENHEIM: Objection. 16:50:40
 16 A. I believe so.
 17 **Q. And the objective was to modify**
 18 **the parade rules so that it could be used as**
 19 **an effective tool in connection with Critical**
 20 **Mass rides?** 16:50:51
 21 MR. MUSCHENHEIM: Objection.
 22 A. No. I believe a tool in
 23 monitoring and controlling large scale events.
 24 **Q. Can you recall any large scale**
 25 **event other than Critical Mass in which the** 16:51:08
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1 Kelly
 2 **department's application of the parade rules**
 3 **had been rejected in a legal challenge?**
 4 MR. MUSCHENHEIM: I am sorry,
 5 could you repeat that. 16:51:21
 6 (Record read.)
 7 A. Not off the top of my head.
 8 **Q. So the only large scale events you**
 9 **are aware of that led the department to amend**
 10 **the parade rules were the Critical Mass rides?** 16:52:00
 11 MR. MUSCHENHEIM: Objection as to
 12 the characterization.
 13 A. I believe that is the matter that
 14 was litigated that was recommended by the
 15 court that we have more specificity in the 16:52:14
 16 regulations.
 17 **Q. And do you recall that NYPD was**
 18 **engaging in mass arrest activity with respect**
 19 **to each Critical Mass ride between the RNC up**
 20 **until the date of the decision talking about** 16:52:33
 21 **the need for clarified parade rules?**
 22 MR. MUSCHENHEIM: Objection.
 23 A. What do you mean by mass arrest?
 24 **Q. Arrest conducted pursuant to NYPD**
 25 **policies and procedures for mass arrests?** 16:52:49
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1 Kelly
 2 MR. MUSCHENHEIM: Objection.
 3 A. Arrests were made, yes.
 4 **Q. And arrests were made for parading**
 5 **without a permit during those Critical Mass** 16:53:03
 6 **rides from August of 2004 up until the time of**
 7 **the rejection of the NYPD's second attempt at**
 8 **an injunction; right?**
 9 A. I believe so.
 10 **Q. And you testified earlier that as** 16:53:13
 11 **a general matter it was your understanding**
 12 **that the arrests for parading without a permit**
 13 **during that period were resulting in a**
 14 **dismissal of charges?**
 15 A. I don't know if I said that 16:53:34
 16 specifically, but charges were dismissed in
 17 many cases, yes.
 18 **Q. Has anyone ever quantified for you**
 19 **the rate at which those charges were**
 20 **dismissed?** 16:53:47
 21 A. No.
 22 **Q. Have you ever heard that the rate**
 23 **exceeded 90 percent?**
 24 A. No.
 25 **Q. Do you have any specific** 16:53:52
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1 Kelly
 2 **information that is inconsistent with a rate**
 3 **of dismissal of 90 percent?**
 4 A.. No.
 5 **Q. So following the dismissals of the** 16:54:00
 6 **arrests for parading without a permit and the**
 7 **court's decision discussed in your 2006 Op-Ed**
 8 **the department then went about amending the**
 9 **parade rules?**
 10 A. Yes. 16:54:15
 11 **Q. Who was involved in drafting**
 12 **revised parade rules?**
 13 A. As far as the department was
 14 concerned the legal bureau, the legal bureau
 15 staff. 16:54:26
 16 **Q. Who specifically in the legal**
 17 **bureau?**
 18 A. Well, under the direction of
 19 Commissioner of Legal Matters Andrew Schaffer.
 20 **Q. Do you know any individuals other** 16:54:38
 21 **than Andrew Schaffer who participated in the**
 22 **drafting of the amendments to the parade**
 23 **rules?**
 24 A. I would only be guessing, so I
 25 would leave it at Commissioner Schaffer's 16:54:53
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1 Kelly
 2 staff.
 3 **Q. Did you discuss with Commissioner**
 4 **Schaffer the amendment of the parade rules?**
 5 MR. MUSCHENHEIM: You can answer 16:55:02
 6 yes or no to that?
 7 A. Yes.
 8 **Q. On how many occasions?**
 9 A. I can't say with certainty.
 10 **Q. Was it more than one?** 16:55:12
 11 A. Yes.
 12 **Q. Was it more than five?**
 13 A. Not certain.
 14 **Q. Have you discussed with anyone at**
 15 **the department -- withdrawn.** 16:55:32
 16 **I will draw your attention to the**
 17 **document that we have marked as Kelly Exhibit**
 18 **4, your July '06 Op-Ed, and I will direct your**
 19 **attention in particular to the paragraph that**
 20 **begins at the bottom of the first column and** 16:56:04
 21 **carries over to the top of the second column**
 22 **and read it. Open quote: So we did. Where**
 23 **the rules didn't specify numbers, the amended**
 24 **version now stipulates that groups of 35 or**
 25 **more would require a permit for a march along** 16:56:23
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1 Kelly
 2 **a sidewalk. Groups of 20 or more using**
 3 **bicycles or other vehicles, would require a**
 4 **permit. Smaller groups obeying traffic**
 5 **regulations would not.** 16:56:38
 6 **My question, Commissioner, is**
 7 **whether you recall NYPD initially proposing an**
 8 **amendment to the parade rules that would**
 9 **provide for a different numeric threshold**
 10 **depending upon whether the individuals in** 16:56:54
 11 **question were in compliance with the law?**
 12 MR. MUSCHENHEIM: Can you read
 13 that back, please.
 14 (Record read.)
 15 A. Let me say that I know that this 16:57:27
 16 was ultimately changed, I don't know if that
 17 is what you are getting at. The number
 18 ultimately was increased to 50.
 19 **Q. Do you recall prior to the number**
 20 **ultimately being increased to 50 that there** 16:57:56
 21 **was a proposed version of the amended parade**
 22 **rules that involved different numeric**
 23 **thresholds, as to whether a permit was**
 24 **required, depending on whether the individuals**
 25 **in question were in compliance with the law?** 16:58:08
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1 Kelly
 2 A. I don't recall specifically.
 3 There was a lot of discussion.
 4 **Q. I will show you Kelly Exhibit 7,**
 5 **which I will represent to you is the Police** 16:58:17
 6 **Department's published version of the proposed**
 7 **amendment at the time of your 2006 Op-Ed**
 8 **piece.**
 9 (Kelly Exhibit 7, amendment to the
 10 definition of parade, marked for 16:58:52
 11 identification, as of this date.)
 12 **Q. I would like to draw your**
 13 **attention to the actual amendment to the**
 14 **definition of parade which appears in the**
 15 **paragraph beginning with A in parenthesis at** 16:58:58
 16 **the bottom of the first page. Do you see**
 17 **that?**
 18 A. Yes.
 19 **Q. And do you see that the definition**
 20 **has three sub parts?** 16:59:08
 21 A. Yes.
 22 **Q. And one of the sub parts includes**
 23 **in the definition of a parade a procession or**
 24 **race which consists of a group of two or**
 25 **pedestrians, vehicles, bicycles or other** 16:59:28
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1 Kelly
 2 **devices moved by human power or ridden or**
 3 **herded animals proceeding together upon any**
 4 **public street or roadway in a manner that does**
 5 **not comply with all applicable traffic laws,** 16:59:38
 6 **rules and regulations.**
 7 **Do you see that; right?**
 8 A. Yes.
 9 **Q. And you can tell from the**
 10 **underlining in this proposed amendment that** 16:59:49
 11 **the prior version of the rules before the**
 12 **amendment did not provide for a different**
 13 **numeric threshold based upon whether the**
 14 **procession was in compliance with applicable**
 15 **traffic laws, rules and regulations; right?** 17:00:08
 16 A. Yes.
 17 **Q. Do you recall discussing this**
 18 **portion of the proposed amendment with any**
 19 **person?**
 20 A. No. 17:00:21
 21 **Q. Do you recall being told by anyone**
 22 **that this codified NYPD's practice with**
 23 **respect to the Critical Mass rides up to that**
 24 **time?**
 25 A. No. 17:00:32
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1 Kelly
 2 **Q. I show you Kelly Exhibit 10. For**
 3 **the record it is stamped NYC 012936 to 12939.**
 4 **(Kelly Exhibit 10, command post**
 5 **log, stamped NYC 012936 to 12939, marked 17:01:19**
 6 **for identification, as of this date..)**
 7 **Q. I will represent to you,**
 8 **Commissioner, that this document has been**
 9 **identified as a command post log kept in**
 10 **connection with a Manhattan Critical Mass ride 17:01:21**
 11 **held on Friday, April 29, 2005. The question**
 12 **I have for you relates to the page ending 938**
 13 **at the bottom.**
 14 **You can certainly review the**
 15 **document to the extent that you like, but my 17:02:04**
 16 **question relates to the entry that appears on**
 17 **the page ending 938 up at the top that**
 18 **corresponds to 1859 hours. Have you had a**
 19 **chance to review that portion of the document?**
 20 **A. Yes. 17:02:34**
 21 **Q. And you see that it reads, open**
 22 **quote: Both teams have been informed that if**
 23 **they see more than five bike riders together**
 24 **and disobeying traffic regulations they are to**
 25 **take police enforcement. 17:02:47**
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1 Kelly
 2 **Do you see that?**
 3 **A. Yes.**
 4 **Q. And is it your understanding that**
 5 **this was the operational policy of NYPD with 17:02:53**
 6 **respect to management of Critical Mass rides**
 7 **in the April 2005 timeframe?**
 8 **A. No.**
 9 **Q. Are you aware that NYPD arrested**
 10 **bicyclists based on the fact that they were 17:03:14**
 11 **part of a group of five or more, and**
 12 **disobeying traffic regulations?**
 13 **A. No.**
 14 **Q. Is it NYPD policy to arrest**
 15 **individuals who commit traffic violations 17:03:26**
 16 **simply because there are others around them**
 17 **who are also committing traffic violations?**
 18 **A. No.**
 19 **Q. Do you know if the NYPD officials**
 20 **responsible for the Critical Mass details in 17:03:51**
 21 **the April 2005 timeframe had the authority to**
 22 **give the order that I just read in the record?**
 23 **A. No.**
 24 **Q. You don't know whether they had**
 25 **the authority? 17:04:08**
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1 Kelly
 2 **A. No, I would assume that they did**
 3 **not.**
 4 **Q. What is that assumption based on?**
 5 **A. It is not the policy as I 17:04:17**
 6 **understand it.**
 7 **Q. What was the policy at that time?**
 8 **A. Well, based on your previous**
 9 **question it is not the policy to arrest people**
 10 **because they are in a group of five or more 17:04:37**
 11 **disobeying traffic regulations. You take**
 12 **action if they are disobeying traffic**
 13 **regulations, but not because they are in a**
 14 **group of five or more.**
 15 **Q. Do you recall learning at any 17:04:54**
 16 **point in time that there was a provision of**
 17 **law that was mistakenly applied in connection**
 18 **with Critical Mass rides?**
 19 **A. I am not certain.**
 20 **Q. Are you familiar with the New York 17:05:14**
 21 **Vehicle and Traffic Law Section 1234?**
 22 **MR. MUSCHENHEIM: Objection to the**
 23 **form.**
 24 **A. Yes.**
 25 **Q. Do you know whether that provision 17:05:22**
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1 Kelly
 2 **of law and its subsections apply in cities of**
 3 **one million population or more?**
 4 **MR. MUSCHENHEIM: Objection.**
 5 **A. That is where you, you ride no 17:05:34**
 6 **more than two abreast?**
 7 **Q. That is one of the -- there is a**
 8 **subsection of the VTL 1234 that addresses**
 9 **whether bicyclists may proceed more than two**
 10 **abreast. My question to you is whether you 17:05:55**
 11 **know if that subsection or any other**
 12 **subsection of VTL 1234 applies in New York**
 13 **City?**
 14 **A. My understanding is that it does**
 15 **not apply in New York City. 17:06:08**
 16 **Q. And when did you learn that?**
 17 **A. In preparation for this**
 18 **deposition.**
 19 **Q. Turning back to Exhibit Kelly 3,**
 20 **the third column of your Op-Ed piece. I will 17:06:23**
 21 **actually read it into the record. I will**
 22 **begin at the bottom of the second column, open**
 23 **quote: Now that Critical Mass has identified**
 24 **itself as an interested party, the Police**
 25 **Department has called on it to seek a permit 17:06:56**
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1 Kelly
 2 if it intends to continue to use the rides in
 3 a way that puts so many in jeopardy.
 4 Otherwise each and every participant is
 5 expected to obey the law or be subject to 17:07:09
 6 arrest. That includes observing traffic
 7 signals and riding in the curb lane no more
 8 than two abreast.
 9 When you wrote that part of your
 10 Op-Ed, Commissioner, was it your belief that 17:07:34
 11 in New York City bicyclists were not permitted
 12 to proceed more than two abreast?
 13 A. Yes.
 14 Q. And your testimony is that you
 15 only learned that that is not the law in New 17:07:47
 16 York City in preparation for your deposition
 17 today?
 18 A. That is correct.
 19 Q. When did that occur?
 20 A.. In the last -- last week. 17:07:54
 21 Q. How many meetings did you have to
 22 prepare for your deposition?
 23 A. One.
 24 Q. And with whom did you have that
 25 meeting? 17:08:05
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1 Kelly
 2 A. People who are present at this
 3 table.
 4 Q. And no others?
 5 A. No. 17:08:10
 6 Q. Are you aware that in the Bray
 7 litigation in December 2004 that a member of
 8 the NYPD legal bureau testified that in fact
 9 the rule concerning three abreast did not
 10 apply within New York City? 17:08:34
 11 MR. MUSCHENHEIM: Objection to the
 12 characterization. Two abreast?
 13 MR. VACCARO: I said three.
 14 MR. MUSCHENHEIM: Objection. Can
 15 you read that back, please. 17:08:47
 16 (Record read.)
 17 A. No.
 18 Q. Do you recall any discussions
 19 within NYPD regarding the applicability of
 20 that rule at any time from the RNC forward 17:09:23
 21 until your deposition preparation last week?
 22 A. No.
 23 Q. Are you aware that for a period of
 24 time NYPD officers assigned to Critical Mass
 25 details were given lists of summonses that 17:09:44
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1 Kelly
 2 could be used to issue citations to
 3 bicyclists?
 4 MR. MUSCHENHEIM: Objection as to
 5 the form. 17:09:54
 6 A. I assume that is the case.
 7 Q. Were you aware that those lists
 8 included section VTL 1234 including the
 9 provision regarding bicyclists may not ride
 10 more than two abreast? 17:10:09
 11 A. No.
 12 Q. Did anyone ever tell you that
 13 unknown numbers of summonses were issued to
 14 Critical Mass bicyclists based on this list
 15 that included VTL 1234? 17:10:21
 16 A. No.
 17 Q. Do you know of any steps that the
 18 department has taken to stop officers from
 19 issuing VTL 1234 summonses to Critical Mass
 20 bicyclists? 17:10:36
 21 A. When something like this happens
 22 and has happened in the past we put out a
 23 notice throughout the department. When its
 24 determined that the law is being enforced
 25 incorrectly we will put out a notice. 17:10:53
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1 Kelly
 2 Sometimes it takes more than one notice. We
 3 have 52,000 employees, big organization.
 4 Sometimes it is hard to get the word out.
 5 Q. Do you know whether such a notice 17:11:04
 6 has been issued with respect to the
 7 enforcement of VTL 1234 within New York City?
 8 A. I don't know that specifically.
 9 Q. Do you know if there is a
 10 threshold number of mistaken summonses that 17:11:15
 11 have to be written before triggering the
 12 departmental policy that there be a corrective
 13 notice?
 14 A. No.
 15 Q. If 20 summonses were issued 17:11:26
 16 improperly because of inaccurate information
 17 given to officers would that be sufficient to
 18 trigger the issuance of a corrective notice?
 19 MR. MUSCHENHEIM: Objection.
 20 Hypothetical. 17:11:45
 21 A. Well, in theory one summons should
 22 be enough to trigger the system. But as I
 23 said a big organization sometimes it is
 24 difficult to, number 1, identify when the law
 25 is being applied incorrectly, and secondly 17:11:59
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1 Kelly
 2 getting a notice out, making certain that it
 3 has gotten out effectively.
 4 **Q. Who in the department is**
 5 **responsible -- withdrawn. 17:12:13**
 6 **Who in the department is**
 7 **responsible for determining whether a**
 8 **corrective notice should be sent?**
 9 A. Generally done through the Office
 10 of Management Analysis and Planning. 17:12:23
 11 **Q. Is there a specific individual?**
 12 A.. There is a Commissioner in charge
 13 of that part of the department.
 14 **Q. And is it that the department that**
 15 **is responsible for actually issuing a 17:12:45**
 16 **corrective notice assuming it is determined**
 17 **one should be issued?**
 18 A. That is the entity that would
 19 trigger the notice going out, yes.
 20 **Q. Are you aware that a group of 17:12:57**
 21 **three city agencies publishes a New York City**
 22 **cycling map that they distribute free of**
 23 **charge to cyclists in New York City?**
 24 A. No.
 25 **Q. Are you aware that departments 17:13:45**
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1 Kelly
 2 **other than NYPD issue guidance to bicyclists**
 3 **on how to safely follow the traffic laws?**
 4 MR. MUSCHENHEIM: Objection. You
 5 can answer. 17:14:01
 6 A. Not specifically aware, but it
 7 doesn't surprise me.
 8 **Q. I show you a document that has**
 9 **been marked as Kelly Exhibit 15, I have 17:14:28**
 10 **photocopies of the relevant portions for**
 11 **courtesy copies.**
 12 (Kelly Exhibit 15, NYC Bicycle
 13 Map, marked for identification, as of
 14 this date.)
 15 **Q. Have you seen the document marked 17:14:46**
 16 **as Kelly Exhibit 15 before, Commissioner?**
 17 A. I don't recall seeing it before,
 18 no.
 19 **Q. I will ask you to open it up to --**
 20 **so that you can read the portion of it that 17:14:54**
 21 **contains not a map, but a box entitled safety**
 22 **tips. I believe you have the right side now,**
 23 **if you just open it up?**
 24 A. Okay.
 25 **Q. Do you see the section in the 17:15:18**
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1 Kelly
 2 **bottom center of the map entitled safety tips?**
 3 A. Tips for multiple use path?
 4 **Q. Above that?**
 5 A. Yes, safety tips, yes. 17:15:28
 6 **Q. Do you see that there are a series**
 7 **of graphics with explanations within that box?**
 8 A. Yes.
 9 **Q. And do you see that in the left**
 10 **hand column at the bottom of the column there 17:15:43**
 11 **is a graphic and an explanation entitled**
 12 **beware of car doors?**
 13 A. Yes.
 14 **Q. And I will just read it for a**
 15 **moment, it says: Beware of car doors. Be 17:15:53**
 16 **wary of parked cars. Motorist can**
 17 **unexpectedly open doors. Be particularly**
 18 **careful if you see a motorist in a car. Ride**
 19 **in a straight line at least three feet away**
 20 **from parked cars. 17:16:11**
 21 My question to you is whether you
 22 are aware of traffic laws that do apply in New
 23 York City that require bicyclists to ride near
 24 the curb?
 25 A. Generally speaking, yes. 17:16:31
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1 Kelly
 2 **Q. Are the departments that publish**
 3 **this map, including the safety tips,**
 4 **authorized to issue guidance to bicyclists**
 5 **that they should ride at least three feet away 17:16:48**
 6 **from parked cars?**
 7 MR. MUSCHENHEIM: Objection.
 8 A. I would assume so, yes.
 9 **Q. If the police officers assigned to**
 10 **Critical Mass details are tasked with 17:17:07**
 11 **enforcing the traffic laws against bicyclists,**
 12 **do you believe that they should be made aware**
 13 **of the guidance to bicyclists contained in a**
 14 **map such as this?**
 15 MR. MUSCHENHEIM: Objection. 17:17:21
 16 A. Probably would be a good idea.
 17 **Q. Are you aware that bicyclists have**
 18 **been issued summonses for activities --**
 19 **withdrawn.**
 20 **Are you aware that bicyclists have 17:17:36**
 21 **been issued summonses in connection with**
 22 **Critical Mass rides for activities that are**
 23 **recommended for safety purposes in this map?**
 24 MR. MUSCHENHEIM: Objection.
 25 A. No. 17:17:48
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1 Kelly
 2 **Q. If that were to be the case would**
 3 **you be concerned that such law enforcement**
 4 **activity was taking place?**
 5 A. I would want to know more of the 17:18:01
 6 circumstances.
 7 **Q. Do you believe that NYPD officers**
 8 **assigned to Critical Mass details should**
 9 **enforce the traffic laws in a manner that is**
 10 **consistent with the guidance that is provided 17:18:16**
 11 **in this map?**
 12 MR. MUSCHENHEIM: Objection. You
 13 can answer.
 14 A. Probably.
 15 **Q. Are you aware that NYPD has 17:18:27**
 16 **undertaken any steps to ensure that its law**
 17 **enforcement against bicyclist is consistent**
 18 **with the guidance in this map?**
 19 A. I am not certain.
 20 **Q. Do you have any information that 17:18:41**
 21 **such steps have been taken?**
 22 A. No.
 23 **Q. Are you aware of an incident last**
 24 **summer in which a police officer in Times**
 25 **Square had an interaction with a bicyclist 17:19:04**
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1 Kelly
 2 **that resulted in an indictment?**
 3 A. Yes.
 4 **Q. Have you seen the videotape that**
 5 **was widely publicized showing the physical 17:19:13**
 6 **contact between that officer and a bicyclist?**
 7 A. Yes.
 8 **Q. Is there a NYPD policy regarding**
 9 **the use of commands to make a traffic stop**
 10 **prior to the application of physical force? 17:19:28**
 11 MR. MUSCHENHEIM: Objection as to
 12 the form.
 13 A. It is a policy of common sense to
 14 ask someone or tell someone to stop before you
 15 would use any sort of physical force. 17:19:43
 16 **Q. So that is the policy of the NYPD?**
 17 A. I am sorry.
 18 **Q. You are saying that that is the**
 19 **policy of the NYPD that an officer should**
 20 **attempt to use a command to make a traffic -- 17:19:56**
 21 **I'm sorry, if I could just finish my question.**
 22 **That is the policy of the NYPD**
 23 **that an officer should attempt to use a**
 24 **command to make a traffic stop prior to using**
 25 **physical force? 17:20:16**
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1 Kelly
 2 MR. MUSCHENHEIM: Objection. But
 3 you can answer.
 4 A. Yes.
 5 **Q. Is the application of force 17:20:17**
 6 **sufficient to topple a moving bicyclist to the**
 7 **ground ever warranted when the sole purpose of**
 8 **the stop is to enforce a traffic violation?**
 9 MR. MUSCHENHEIM: Objection.
 10 A. I would say no. 17:20:42
 11 **Q. Do you know whether NYPD officers**
 12 **receive any specific training or instructions**
 13 **regarding the save manner in which to bring a**
 14 **moving bicyclists to a stop?**
 15 A. I am not certain. 17:21:00
 16 **Q. Do you believe that NYPD officers**
 17 **receive training with respect to how to bring**
 18 **the occupant of a motor vehicle to a stop?**
 19 A. Yes.
 20 **Q. Do you believe that the techniques 17:21:16**
 21 **that are taught for stopping motor vehicles**
 22 **are appropriate in use with bicyclists?**
 23 MR. MUSCHENHEIM: Objection. You
 24 can answer.
 25 A. It depends on the circumstances. 17:21:27
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1 Kelly
 2 **Q. Isn't it the case that a bicyclist**
 3 **is potentially more susceptible to injury than**
 4 **an individual inside a motor vehicle?**
 5 A. Possibly. 17:21:40
 6 MR. MUSCHENHEIM: Objection.
 7 **Q. Are you aware of any steps taken**
 8 **by NYPD to develop techniques or instructions**
 9 **for officers on how to safely make a traffic**
 10 **stop on a bicyclist? 17:21:55**
 11 A. No, I am not.
 12 **Q. Are you aware of the protests**
 13 **regarding the verdict issued in the Sean Bell**
 14 **shooting that took place on May 7, 2008?**
 15 A. Yes. 17:22:18
 16 Q.. The protesters traveled from One
 17 Police Plaza to the Brooklyn Bridge; is that
 18 correct?
 19 A. Some did. There were multiple
 20 protests in other locations, but yes. 17:22:31
 21 **Q. Were you aware that while**
 22 **traveling on route from One Police Plaza to**
 23 **the Brooklyn Bridge certain of those**
 24 **demonstrators filled up the Centre Street**
 25 **roadway? 17:22:46**
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1 Kelly
 2 A. Yes.
 3 Q. And are you aware that those
 4 pro -- are you aware that the demonstrators
 5 proceeding in Centre Street on that occasion 17:22:55
 6 numbered more than 50?
 7 A. Yes.
 8 Q. Are you aware that none of those
 9 protesters were arrested or summonsed for
 10 parading without a permit as they traveled on 17:23:09
 11 the roadway?
 12 A. They were arrested for other
 13 violations. Over 200 arrests were effected.
 14 Q. Were any of those demonstrators
 15 subject to enforcement of the parade rules for 17:23:20
 16 having proceeded on foot in a group of 50 or
 17 greater along Centre Street from One Police
 18 Plaza to the Brooklyn Bridge?
 19 MR. MUSCHENHEIM: Objection.
 20 A. They were arrested for, to the 17:23:32
 21 best of my knowledge, disorderly conduct.
 22 Q. Are you aware that NYPD officers
 23 blocked motor vehicle traffic from Centre
 24 Street as the demonstrators proceeded along
 25 Centre Street? 17:23:48
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1 Kelly
 2 A. Yes.
 3 Q. And are you aware that no
 4 enforcement action taken -- withdrawn.
 5 Are you aware that no enforcement 17:23:59
 6 action was taken against the demonstrators as
 7 they proceeded on Centre Street?
 8 MR. MUSCHENHEIM: Objection.
 9 A. Enforcement action was ultimately
 10 taken for blocking the roadway and they were 17:24:10
 11 arrested for disorderly conduct.
 12 Q. Why weren't the demonstrators
 13 arrested or summonsed or otherwise subject to
 14 law enforcement action for proceeding in
 15 Centre Street in a group of 50 or greater? 17:24:27
 16 MR. MUSCHENHEIM: Objection.
 17 A. It was a decision on the part of
 18 the Incident Commander to arrest them for
 19 disorderly conduct. It seems to me it was an
 20 appropriate charge. 17:24:39
 21 Q. Are you aware of an arrangement
 22 between the NYPD and the demonstrators on that
 23 day that law enforcement action would take
 24 place only after the demonstrators were
 25 permitted to reach the entrance of the 17:24:54
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1 Kelly
 2 Brooklyn Bridge?
 3 MR. MUSCHENHEIM: Objection.
 4 A. It was not unusual.
 5 Q. Do you have any specific 17:25:00
 6 information that such an arrangement existed
 7 with respect to that event?
 8 A. I don't recall, but I wouldn't
 9 doubt it.
 10 Q. I would like to take a short break 17:25:16
 11 so we can change the tape and obviously we are
 12 near the end --
 13 A. What does that mean?
 14 THE VIDEOGRAPHER: The time is now
 15 5:25 p.m., we are now off the record. 17:25:36
 16 (Recess taken.)
 17 THE VIDEOGRAPHER: This is the
 18 start of tape number 3. The time is now
 19 5:34 people. We are back on the record.
 20 Q. Turning back to Exhibit Kelly 3, 17:34:02
 21 which is your 2004 Op-Ed, and do you see in
 22 the third column of that article where it
 23 says: Each and every participant is expected
 24 to obey the law or be subject to arrest. That
 25 includes observing traffic signals and riding 17:34:28
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1 Kelly
 2 in the curb lane no more than two abreast.
 3 Do you see that?
 4 A. Yes.
 5 Q. This is a statement that 17:34:50
 6 individuals will be arrested if they fail to
 7 follow the traffic rules, is it not?
 8 A. Well, I would interpret it as
 9 being arrested or summonsed.
 10 Q. But it says arrested; right? 17:35:04
 11 MR. MUSCHENHEIM: Objection.
 12 A. It says arrested, but in our
 13 business we interpret an arrest or summons
 14 pretty much the same thing.
 15 Q. And when this was issued on 17:35:16
 16 Thursday, October 28, 2004 there was an
 17 expectation that there would be a Critical
 18 Mass ride on the following day, Friday,
 19 October 29, 2004; is that correct?
 20 A. Most likely. 17:35:30
 21 Q. And do you recall whether there
 22 were any arrests made at that Critical Mass
 23 ride?
 24 A. I don't recall.
 25 Q. Do you recall whether there were 17:35:41
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1 Kelly
 2 any summonses issued?
 3 A. I don't recall.
 4 Q. Do you recall if the officers were
 5 instructed to arrest participants for parading 17:35:47
 6 without a permit or disorderly conduct?
 7 A. I don't know what they were
 8 instructed..
 9 Q. Do you know whether the officers
 10 assigned to that Critical Mass detail had any 17:36:00
 11 discretion as to whether they could summons or
 12 arrest bicyclists?
 13 A. I am not certain.
 14 Q. And who would have been
 15 responsible for the orders given to the 17:36:12
 16 officers with respect to such discretion?
 17 A. The Incident Commander.
 18 Q. You discussed the July 2004
 19 Critical Mass ride at some length in this
 20 Op-Ed, Kelly Exhibit 3; is that correct? 17:36:31
 21 A. Yes.
 22 Q. Was the July ride brought to your
 23 attention before it occurred?
 24 A. I am not certain.
 25 Q. Did you know that there was a 17:36:43
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1 Kelly
 2 large NYPD presence at that ride?
 3 MR.. MUSCHENHEIM: Objection.
 4 A. I may have.
 5 Q. Did you know that the Scooter Task 17:36:55
 6 Force was assigned to monitor that ride?
 7 A. I may have known that.
 8 Q. Did you know that Chief Scagnelli
 9 was also on the scene of that ride?
 10 A. I am not certain. 17:37:11
 11 Q. This is the ride on which the
 12 bicyclists proceeded over the FDR Drive; is
 13 that correct?
 14 A. You mentioned in the article, yes.
 15 Q. Were you aware that the Disorder 17:37:21
 16 Control Unit was present at that ride?
 17 MR. MUSCHENHEIM: Objection.
 18 A. I may have been.
 19 Q. Were you aware that the Technical
 20 Assistance and Response Unit was at that ride 17:37:33
 21 to take videotape?
 22 A. I may have been.
 23 Q. Were you aware that there was an
 24 Aviation Unit that was assigned to take
 25 pictures from above of that ride? 17:37:43
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1 Kelly
 2 A. I may have been.
 3 Q. Can you -- do you recall any
 4 specific information as to whether you were
 5 aware of that NYPD presence at that ride? 17:37:55
 6 MR. MUSCHENHEIM: I am sorry,
 7 could you repeat that question.
 8 (Record read.)
 9 A. I don't recall any specific
 10 information, but I may very well have been 17:38:20
 11 aware of resources deployed.
 12 Q. And do you recall the section of
 13 the Bray decision in which Judge Pauley found
 14 that Critical Mass bicyclists had proceeded on
 15 the FDR Drive on several previous occasions 17:38:37
 16 before July 2004 with a NYPD presence along?
 17 A. That is the situation -- part of
 18 the decision that we read before; correct?
 19 Q. Yes.
 20 A. Yes. 17:38:52
 21 Q. Isn't it true that NYPD was aware
 22 that the Critical Mass bicyclists were going
 23 to proceed on the FDR Drive in July of 2004?
 24 MR. MUSCHENHEIM: Objection.
 25 A. I don't know that to be the case. 17:39:03
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1 Kelly
 2 Q. Isn't it true that NYPD bike
 3 mounted officers accompanied the bicyclists on
 4 the July 2004 officers?
 5 MR. MUSCHENHEIM: Don't answer 17:39:20
 6 that question except as to uniformed bike
 7 mounted officers under the law
 8 enforcement privilege.
 9 A. I don't know.
 10 Q. Is it NYPD practice for paperwork 17:39:26
 11 to be generated in connection with the
 12 assignment of the Aviation Unit, the Disorder
 13 Control Unit or the Technical Assistance and
 14 Response Unit to a public demonstration?
 15 MR. MUSCHENHEIM: Objection. 17:39:45
 16 A. Not necessarily.
 17 Q. Are you aware of an event at which
 18 all three of those units had been assigned in
 19 which there was no paperwork generated
 20 memorializing those assignments? 17:39:57
 21 A. Its possible.
 22 Q. Is it NYPD practice for a detail
 23 request to be issued for staffing of officers
 24 at a public event?
 25 MR. MUSCHENHEIM: Objection. 17:40:14
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1 Kelly
 2 A. Would you say that again.
 3 (Record read.)
 4 A. Yes.
 5 **Q. Are you aware of an unusual 17:40:30**
 6 **occurrence report that was prepared in**
 7 **connection with the July 2004 Critical Mass**
 8 **ride?**
 9 A. Am I specifically aware of it; no.
 10 **Q. Would you consider the July 2004 17:40:49**
 11 **Critical Mass ride an unusual event?**
 12 MR. MUSCHENHEIM: Objection to the
 13 form.
 14 A. Perhaps.
 15 **Q. You say perhaps because it has 17:40:57**
 16 **been established that the bicyclists proceeded**
 17 **on the FDR Drive on three prior occasions?**
 18 MR. MUSCHENHEIM: Objection.
 19 A. No. The determination as to
 20 whether or not to make an unusual occurrence 17:41:11
 21 report to a certain extent is left with the
 22 Incident Commander.. There are certain events
 23 that would require one.. Obviously a homicide.
 24 A significant crime of violence. Those sorts
 25 of things would require it. 17:41:33
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1 Kelly
 2 Events that don't fit into one of
 3 the enumerated categories may or may not
 4 result in an unusual occurrence report being
 5 prepared. 17:41:45
 6 **Q. If there has been sworn testimony**
 7 **in this matter that an unusual occurrence**
 8 **report was prepared describing the activity at**
 9 **the July 2004 Critical Mass ride can you think**
 10 **of any reason why that report would no longer 17:42:01**
 11 **be available?**
 12 MR. MUSCHENHEIM: Objection.
 13 A. No.
 14 **Q. Is it the department's practice to**
 15 **retain unusual occurrence reports? 17:42:10**
 16 A. Yes.
 17 **Q. Are they retained by the Chief of**
 18 **Patrol?**
 19 A. It depends on where they are --
 20 where the addressee is located. But I would 17:42:27
 21 say by the Chief of Department.
 22 **Q. If the Chief of Patrol was listed**
 23 **as the addressee for an unusual occurrence**
 24 **report related to the July 2004 Critical Mass**
 25 **ride, would you expect the office of the Chief 17:42:43**
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1 Kelly
 2 **of Patrol to still have a copy of that report?**
 3 A. Yes, I would.
 4 **Q. Are you aware of a meeting**
 5 **convened by Chief of Department Esposito 17:42:55**
 6 **following the July 2004 Critical Mass ride?**
 7 A. No. I may be, I just don't
 8 recall.
 9 **Q. Do you recall attending such a**
 10 **meeting? 17:43:06**
 11 A. Did I attend the meeting; that I
 12 attended the meeting; no.
 13 **Q. Did you ask that a meeting be held**
 14 **with Chief Esposito and others within the NYPD**
 15 **to discuss the events at the July 2004 17:43:25**
 16 **Critical Mass ride?**
 17 A. I don't recall.
 18 **Q. Do you ever recall receiving a**
 19 **report from anyone at NYPD with respect to a**
 20 **proposed course of action in response to the 17:43:38**
 21 **July 2004 Critical Mass ride?**
 22 A. No.
 23 **Q. Did NYPD formulate a policy in**
 24 **response to the July 2004 Critical Mass ride?**
 25 A. I don't recall. 17:43:54
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1 Kelly
 2 **Q. Wasn't that policy to undertake**
 3 **mass arrests of Critical Mass participants**
 4 **thereafter?**
 5 MR. MUSCHENHEIM: Objection. 17:44:06
 6 A. I don't recall specifically what
 7 emanated as a result of that event.
 8 **Q. But after the July 2004 Critical**
 9 **Mass ride there was in fact a series of mass**
 10 **arrests at each of the monthly rides; isn't 17:44:19**
 11 **that correct?**
 12 MR. MUSCHENHEIM: Objection.
 13 A. Well, the next month was the ride
 14 prior to the Republican National Convention.
 15 **Q. And at that ride -- 17:44:30**
 16 A. There were arrests made at that
 17 ride or events associated with that ride.
 18 **Q. And do you recall that there were**
 19 **arrests made in connection with the September,**
 20 **October and November 2004 Critical Mass rides? 17:44:47**
 21 A. I don't recall specifically, but I
 22 assume that is the case.
 23 **Q. I will show you an exhibit marked**
 24 **Kelly Exhibit 12 -- withdrawn.**
 25 **I will show you an exhibit marked 17:45:19**
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1 Kelly
 2 as Kelly Exhibit 11.
 3 (Kelly Exhibit 11, unusual
 4 occurrence report, marked for
 5 identification, as of this date.) 17:45:32
 6 Q. It is a composite exhibit, but my
 7 question is going to relate only to the report
 8 that appears on the first two pages.
 9 MR. MUSCHENHEIM: This is 11.
 10 MR. VACCARO: This is 11. 17:45:48
 11 Q. There are a number of summonses
 12 attached, but my questions will relate to the
 13 first two pages.
 14 Commissioner, would you agree with
 15 me that this document is what we have been 17:46:49
 16 referring to as an unusual occurrence report?
 17 MR. MUSCHENHEIM: The first two
 18 pages of the document?
 19 Q. The first two pages of the
 20 document? 17:46:59
 21 A. Yes. Sometimes it says unusual on
 22 the title, but okay.
 23 Q. You believe that that is what this
 24 is?
 25 A.. This is a report on the event, on 17:47:09
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1 Kelly
 2 the Critical Mass demonstration.
 3 Q. You agree with me that the
 4 description of the detail indicates that there
 5 were at least 100 officers who were assigned 17:47:20
 6 to this Critical Mass detail?
 7 MR. MUSCHENHEIM: Objection. The
 8 document speaks for itself.
 9 A.. Okay, you added them up and there
 10 are over a hundred, I will take your word for 17:47:38
 11 it.
 12 Q. And the number of bicyclists who
 13 came to this particular Critical Mass bicycle
 14 ride was 33 according to the report?
 15 A. All right. 17:47:52
 16 Q. And 12 summonses were issued?
 17 A. Uh-hum.
 18 Q. Can you name another public
 19 demonstration involving fewer than a hundred
 20 participants where NYPD has staffed it with a 17:48:03
 21 three to one ratio?
 22 A. You can't anticipate, you don't
 23 know how many people are going to show up.
 24 There are many demonstrations where we will
 25 assign people or anticipate a demonstration, 17:48:15
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1 Kelly
 2 we will assign people, the demonstration
 3 doesn't take place, or it is much smaller than
 4 anticipated, or conversely much larger than we
 5 anticipated. So that is fairly standard fair. 17:48:28
 6 There is an estimate as to how
 7 many participants there will be in a
 8 particular event. A determination is made as
 9 to what resources are needed, but that may or
 10 may not be appropriate for the event based on 17:48:45
 11 the number of people that participate.
 12 Q. Well, you testified earlier that
 13 generally speaking your understanding is that
 14 the rides have been less than 200 individuals
 15 over the last year? 17:49:01
 16 A. Generally speaking, yes.
 17 Q. Is it -- and you are saying that
 18 the department has specifically taken that
 19 factor into account in its assignment of
 20 Critical Mass details, the size of the 17:49:19
 21 details?
 22 A. It depends on the information that
 23 the borough command might have. They may have
 24 information in which they anticipate a
 25 significant number of people coming for 17:49:31
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1 Kelly
 2 whatever reason, and just simply doesn't
 3 materialize. As I said conversely it can
 4 operate in reverse.
 5 Q. If you could have perfect 17:49:41
 6 information and you could know that a Critical
 7 Mass bicycle ride would not exceed 200
 8 individuals under any circumstances, would it
 9 be appropriate to assign a detail in excess of
 10 100 officers to that effect? 17:49:55
 11 MR. MUSCHENHEIM: Objection.
 12 Hypothetical.
 13 A. It depends on the information that
 14 the commander has. It depends on exigencies
 15 that might develop. They might have specific 17:50:10
 16 information that in their judgment requires
 17 more personnel.
 18 Q. So in your view it could certainly
 19 be reasonable for a Borough Commander to
 20 assign in excess of a hundred NYPD personnel 17:50:28
 21 to a Critical Mass event that was not expected
 22 to exceed 200 individuals?
 23 MR. MUSCHENHEIM: Objection.
 24 Hypothetical.
 25 A. All of our borough commanders have 17:50:37
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1 Kelly
 2 over 30 years of experience. They have staff
 3 make these determinations. It is not an exact
 4 silence. I would rely on their experience and
 5 their judgment. 17:50:52
 6 **Q. Can you name any other group in**
 7 **New York City that engages in periodic public**
 8 **demonstrations that NYPD monitors as closely**
 9 **and as intensively as Critical Mass?**
 10 MR. MUSCHENHEIM: Objection. 17:51:06
 11 A. Well, there are groups that we
 12 monitor and we watch.
 13 **Q. Could I have a read back of my**
 14 **question, please, unless you are not finished**
 15 **with your answer? 17:51:27**
 16 MR. MUSCHENHEIM: I want to
 17 caution the witness not to reveal any
 18 information protected by the law
 19 enforcement privilege.
 20 THE WITNESS: Yes. 17:51:36
 21 MR. MUSCHENHEIM: Read back the
 22 question.
 23 (Record read.)
 24 A. Under the law enforcement
 25 privilege I don't have to name them; correct? 17:52:09
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1 Kelly
 2 **Q. Can you name them, you don't have**
 3 **to name them?**
 4 A. Can I name them, yes.
 5 **Q. I have one follow up -- 17:52:16**
 6 MR. SCHAFFER: The time is up.
 7 MR. MUSCHENHEIM: What time is it?
 8 THE VIDEOGRAPHER: You are at
 9 exactly three hours right now.
 10 MR. MUSCHENHEIM: We are finished. 17:52:29
 11 **Q. Are those groups suspected of**
 12 **violation of law other than traffic rules?**
 13 MR. MUSCHENHEIM: We have been
 14 here for three hours. We are not
 15 answering any other questions. 17:52:40
 16 THE VIDEOGRAPHER: That concludes
 17 the video record for today. The time is
 18 (Continued on next page.)
 19
 20
 21
 22
 23
 24
 25
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1
 2 now 5:53 p.m., we are now off the
 3 record.
 4 (Time noted: 5:53 p.m.)
 5 17:53:01
 6
 7 RAYMOND KELLY
 8
 9 Subscribed and sworn to before me
 10 this ___ day of _____, 2009
 11 _____
 12
 13
 14
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 23
 24
 25
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1
 2 C E R T I F I C A T E
 3 S T A T E O F N E W Y O R K)
 4 : s s .
 5 C O U N T Y O F N E W Y O R K)
 6
 7 I, Philip Rizzuti, a Notary Public
 8 within and for the State of New York, do
 9 hereby certify:
 10 That RAYMOND KELLY, 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 20th day of
 21 February, 2009.
 22
 23 PHILIP RIZZUTI
 24
 25
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1
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 6 ----- INFORMATION REQUESTS -----
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 9 ----- EXHIBITS -----
 10 Kelly Exhibit 2, document Bates 19
 11 numbered NYCE 11406,
 12 Kelly Exhibit 1, declaration, 27
 13 Kelly Exhibit 3, excerpt from 62
 14 Daily News, Thursday, October
 15 28, 2004, Op-Ed publication by
 16 Commissioner Raymond W. Kelly,
 17 Kelly Exhibit 4, New York Post 70
 18 Op-Ed by Ray Kelly published
 19 July 21, 2006,
 20 Kelly Exhibit 8, court decision, 81
 21 Kelly Exhibit 7, amendment to 116
 22 the definition of parade,
 23 Kelly Exhibit 10, command post 118
 24 log, stamped NYC 012936 to
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 2 Kelly Exhibit 15, NYC Bicycle 127
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1
 2 *** ERRATA SHEET ***
 3 NAME OF CASE: FIVE BORO VS. CITY OF NY
 4 DATE OF DEPOSITION: February 17, 2009
 5 NAME OF WITNESS: RAYMOND KELLY
 6 PAGE LINE FROM TO
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19
 20
 21 _____
 22 RAYMOND KELLY
 23 Subscribed and sworn to before me
 24 this ____ day of _____, 2009.
 25 _____
 (Notary Public) My Commission Expires:
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