

**CLANCY
DECLARATION**



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

- against -)

THE CITY OF NEW YORK; RAYMOND)
KELLY, Police Commissioner of the New)
York City Police Department; JAMES)
TULLER, Commanding Officer, Patrol)
Borough Manhattan South; Lt. John Doe,)
and Captain Jane Doe, New York City)
Police Department,)

Defendants.)

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1. My name is Eileen Clancy.
 2. I reside in New York City.
 3. In 2000 I helped found I-Witness Video, an organization located in New York City that uses video to protect civil liberties. Specifically, we monitor police actions at events protected by the First Amendment. I have worked on the I-Witness Video project since its founding.
 4. I began attending Manhattan Critical Mass rides in August of 2004 in order to monitor police activity. I have been present at almost every Critical Mass ride between August 2004 and present. Between August 2004 and February 2007, I have

probably missed only about four Manhattan Critical Mass rides. I do not bicycle in the Critical Mass rides, but I observe as the bicyclists gather in Union Square and I run alongside the ride to observe it.

5. Based on an incident I witnessed at the Times Up space on October 29, 2004, reports of other incidents, and the behavior and appearance of some participants in the Critical Mass rides I came to the opinion that there were undercover police officers riding with and videotaping the Critical Mass rides and its participants but initially I was not in a position to confirm their status as members of the police department. I was concerned that these officers were violating the Handschu consent decree and I wanted to document that. I also questioned whether there was a legitimate law enforcement purpose to be served by their attending these rides.

6. From the spring of 2005 through December 2005, I undertook an investigation of the NYPD's use of undercover officers and video surveillance at Critical Mass rides in Manhattan. This investigation consisted of analyzing videotapes of the Critical Mass rides. The tapes I reviewed were recorded by me, other civilians, or were police footage turned over in discovery during criminal cases.

7. I have seen what I believe to be undercover police officers and police video surveillance at every Manhattan Critical Mass ride that I have attended. These officers were not merely plainclothes police officers, but deliberately intended to blend in with the participants and they had no police insignia on them. They have purposely worn protest buttons and stickers, including one stating "Bloomberg Suck\$", in order to appear to be civilian participants. I have seen them mingling with other riders. They ride with

the other participants and are often on their cell phones – I believe tracking the events and calling in the locations – and occasionally videotaping. Some officers ride in cars and videotape. As a result of a tape turned over in discovery during a criminal case, I learned that at least one officer had used a hidden camera placed on his body as he rode undercover with the Critical Mass ride. This footage can be seen in an edited format at <http://blip.tv/file/get/Iwitness-NYPDHiddenCamera520.mov> and is attached as Exhibit A. I know that the NYPD is capable of transmitting live video from a mobile video recording device that is worn by an individual.

8. Through the process of recording the rides and watching other footage of the rides, I was able to identify activity on the part of the undercover officers that confirmed their status as police officers: they were seen conferring with uniformed officers in a way that suggested collaboration with those officers; they were seen telling a uniformed officer “I’m on the job;” they were arrested and immediately released; and they engaged in other behavior consistent with that of undercover police officers. I became certain that there were undercover officers at each ride – some using cameras – and that there were many of them.

9. Once I had gathered a significant amount of footage chronicling the activities of these individuals, I submitted some of the most telling material to the New York Times. The New York Times compiled video shot by the police (and turned over during discovery in criminal cases), about six other civilians, and me and posted this video on its website on December 22, 2005 (available at http://video.on.nytimes.com/?fr_story=8be43bbe911fe4027477fad3f56017ec4672d86c).

10. One minute and five seconds into the New York Times video the footage portrays three undercover police officers preparing for a Critical Mass ride in April of 2005. I shot this footage and it accurately portrays what I saw.

11. To my knowledge, since the New York Times posted the video, none of the people who were shown as undercover officers in the video have appeared at a Critical Mass ride again.

12. Despite the news coverage, the NYPD does not seem to have reduced their level of surveillance. From what I have seen, the level of police surveillance is unchanged over the time that I have been attending and observing Critical Mass rides.

13. The police have never denied that the people portrayed as undercover officers in this video were, in fact, police officers.

I declare under penalty of perjury that the foregoing is true and correct.

Eileen Clancy

EILEEN CLANCY



Exhibit A