

**OLIVER  
DECLARATION**

**Declaration of Gideon Orion Oliver**

GIDEON ORION OLIVER, ESQ., an attorney duly admitted to practice law in the State of New York, declares under penalty of perjury that:

1. I am associated with OLIVER & OLIVER, a law firm located at 156 Madison Avenue, Albany, New York 12202.
2. I am a member of the bar of this Court.
3. I make this declaration at the request of counsel for the plaintiffs. Specifically, I was contacted by Stephen Vaccaro, who explained that he and his colleagues are challenging the constitutionality of Chapter 19 Title 38 of the Official Compilation of Rules of the City of New York. Mr. Vaccaro asked me to provide the Court with representative examples illustrating the illegitimacy of the Police Department's ticketing and arresting process as it has been directed at bicyclists who have been arrested for allegedly participating in Critical Mass rides in Manhattan.
4. Critical Mass bicycle rides are "a bike-riding phenomenon in major cities worldwide on the last Friday of every month in approximately 400 cities. They are touted as a means of promoting the rights of bicyclists and the rights of pedestrians on their own streets and focusing attention on the deteriorating quality of life-starting with the toxic levels of air and noise pollution-that cars create for cities." *Bray v. City of New York*, 346 F.Supp.2d 480, 483 (SDNY October 28, 2004) (William H. Pauley III, J.) ("*Bray I*"); see also *Bray v. City of New York*, 356 F.Supp.2d 277 (SDNY December

23, 2004) ("*Bray II*"); *City of New York v. Time's Up!, Inc.*, 11 Misc.3d 1052(A) (N.Y. Sup. February 14, 2006) (Michael D. Stallman, J.) ("*TU!*"); *People v. Bezjak*, 11 Misc.3d 424 (N.Y. City Crim. Ct. January 9, 2006) (Gerald Harris, J.); *People v. Barrett*, 821 N.Y.S.2d 416 (N.Y. City Crim. Ct., N.Y. Cty. 2006) (Ellen Gesmer, J.).

5. For more than a decade prior to August of 2004, on the nights of Critical Mass bicycle rides in Manhattan, bicyclists, well-wishers, and members of the press had typically gathered in Union Square Park at approximately 7:00 PM. The rides historically left at around 7:30 PM. The bicyclists in the front of the ride typically determine where the ride is going. There is no pre-determined route and no formal leadership. *See, e.g., Bray I*, 346 F.Supp.2d at 483; *TU!*, 11 Misc.3d at 1.

6. "Until the summer of 2004, the Manhattan rides took place with little police presence, and no arrests. In the summer of 2004, especially in August, immediately preceding the Republican National Convention, the City markedly increased police presence and involvement, and the police arrested 264 people." *TU!*, 11 Misc.3d at 1.

7. According to information from various sources tracking the status of criminal cases arising from arrests made on the nights of Critical Mass rides since just before the Republican National Convention in Manhattan, between August of 2004 and December of 2005, NYPD officers arrested in excess of 660 people who were later prosecuted for violating the parade permitting scheme and

committing disorderly conduct while riding their bicycles – approximately 264 on August 27, 2004, and approximately 90 more between that time and the end of the RNC in September of 2004; eight on September 24, 2004; 35 on October 29, 2004; 17 on November 26, 2004; one on December 31, 2004; eight on January 28, 2005; 14 on February 25, 2005; 37 on March 25, 2005; 35 on April 29, 2005; 10 on May 27, 2005; 11 on June 24, 2005; 33 on July 27, 2005; 48 on August 26, 2005; 36 on September 30, 2005. zero on October 28, 2005; three on November 25, 2005; and 12 on December 25, 2005.

8. With fewer than five exceptions, all of the approximately 308 people arrested on the nights of Critical Mass rides in Manhattan between September 2004 and December 2005 were charged with violating the parade permitting scheme and committing disorderly conduct.

9. At least 81 of the approximately 308 people arrested on the nights of Critical Mass rides in Manhattan between September 2004 and December 2005 who were subsequently charged with violating the parade permitting scheme and committing disorderly conduct while riding their bicycles pleaded not guilty at their arraignments.

10. Motions to dismiss parading without a permit and disorderly conduct charges in those cases for their attendant complaints' failure sufficiently to allege individualized probable cause and other aspects of their insufficiency and on constitutional grounds

resulted in approximately eighteen written decisions from the New York City Criminal Court between 2004 and 2006, culminating in *Bezjak* and *Barrett*.

11. 24 of the aforementioned approximately 81 people who pleaded not guilty at their arraignments ultimately were tried for a total of 63 charges, resulting in seven convictions for parading without a permit and eighteen convictions for violating NYS Penal Law 240.20(5) and the dismissals of 38 charged violations of the parade permitting scheme and NYS Penal Law 240.20(6), *see, e.g., Bezjak; see also Barrett*. In every case, the prosecution used photographic and/or videotape and other evidence that now appear to have been obtained without *Handschu* compliance. Appeals of the majority of those convictions are pending before the Supreme Court of the State of New York, Appellate Term, First Department.

12. Of the approximately 308 resulting cases prosecuted in the New York City Criminal Court, approximately 290 ultimately were dismissed resulting in a dismissal rate of 94%.

13. Starting in February of 2006, the Police Department shifted its enforcement tactics away from the mass arrests that were typical at Critical Mass rides in 2005. Instead, the Police began issuing summonses to perceived participants in Manhattan Critical Mass rides. I understand that, between February 24, 2006 and August 14, 2006, NYPD officers have issued dozens of summonses to bicyclists on the last Friday of each included month in Manhattan.

14. Prior to February of 2006, tickets were rarely issued on the nights of Critical Mass rides in Manhattan for anything but violations of NYCAC 16-122. However, as the crackdown wore on, and despite the City's earlier concession in *Bray v City of New York*, 346 F. Supp. 2d 480 at 481 (S.D.N.Y. 2004), that VTL 1234(b) was not applicable in New York City, the Police Department instituted a related and coordinated enforcement action that included the illegitimate ticketing of individuals for VTL 1234(b) violations. Upon information and belief, at the February 24, 2006 Critical Mass ride the police issued 23 tickets; at the March 31, 2006 ride the police issued 37. These tickets included an unknown number issued for violations of VTL 1234(b). I reviewed a number of tickets alleging violations of VTL 1234(b) issued on February 24, 2006 and March 31, 2006. I also reviewed numerous tickets alleging violations of VTL 1234(b) issued between October 28, 2004 and February 24, 2006.

15. In April of 2006, I contacted the City's Corporation Counsel and requested that they remind the Police Department that VTL 1234(b) continues to have no application in the City of New York. Sheryl Neufeld, attorney at the Corporation Counsel, responded via e-mail on May 17, 2006, attached as Exhibit A, stating that the Police Department would not oppose the dismissal of all of the tickets issued pursuant to VTL 1234(b) at the February and March Manhattan Critical Mass rides. I was not able to determine how many of these tickets actually were dismissed.

16. I have a copy of my affirmation and related exhibits in the case of *The People of The State of New York v. Kevin Caplicki* dated March 27, 2006 attached as Exhibit B. It

is offered to provide a detailed example of the difficulty of challenging the Police Department's illegitimate ticking and arresting process in a New York City Criminal Court case.

17. On October 28, 2004, Judge Pauley of this Court ruled that "participation in the Critical Mass bike rides constitutes 'expressive association' entitled to First Amendment protection." *Bray I*, 346 F.Supp.2d at 488.

18. The Police Department's arresting practices, which have resulted in a 94% dismissal rate, and its enforcement of VTL 1234(b) between October 28, 2004 and February 24, 2006 although it knew that VTL 1234(b) was not applicable in NYC, are flagrant examples of the Police Department's use of illegitimate means to unduly burden activity that is protected by the First Amendment.

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

Executed at New York, New York this 26th day of March, 2007.

  
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Gideon Orion Oliver

10/1/2011

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**From:** Neufeld, Sheryl [SNeufeld@law.nyc.gov]  
**Sent:** Monday, May 15, 2006 4:54 PM  
**To:** 'Gideon Oliver'  
**Subject:** RE: VTL 1234 Summonses  
**Sensitivity:** Confidential

Oops. Forgot that trying to use the section symbol in an email causes the email to be sent. Here's the complete version:

Gideon,

The Police Department has reached out to the DMV Supervising ALJ and advised him that the Police Department would not oppose the dismissal of any summonses issued pursuant to VTL Section 1234. This should take care of the summonses that were issued during the February and March Critical Mass Rides.

Hope you're doing well.

-Sheryl

-----Original Message-----

**From:** Gideon Oliver [mailto:gideon@oliverandoliverlaw.com]  
**Sent:** Thursday, April 20, 2006 6:35 PM  
**To:** 'Neufeld, Sheryl'; rbinder@law.nyc.gov  
**Subject:** VTL 1234 Summonses  
**Sensitivity:** Confidential

Dear Sheryl and Robin:

Please see attached. Hope you are both doing well. Take care.

- Gideon

Gideon Orion Oliver  
Oliver & Oliver  
Attorneys at Law  
c/o 200 East 10th Street #917  
New York, New York 10003-7702  
www.oliverandoliverlaw.com  
(646) 602-9242

"Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots." *Tinker v. Des Moines Independent Community School District*, 393 US 503, 513 (1969).

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