

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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07 Civ. _____

I, DAVID PENGILLY, hereby declare as follows:

1. I was born on March 25, 1946.
2. I reside at 200 West 15th Street in Manhattan, New York.
3. I have been an editor at BusinessWeek Magazine for seventeen (17) years.
4. On Friday, May 27, 2005 at approximately 7:35 PM, I left my office and got on my bicycle to ride home.

5. My BusinessWeek office is in the McGraw-Hill Building at 49th Street and Sixth Avenue.

6. For years, I have trundled back and forth to work on my bike--a Raleigh three-speed about 40 years old.

7. My direct route home is westward on 49th to Seventh, then straight south through Times Square.

8. As I rode into Times Square on the spring evening of May 27, I saw I had chanced to coincide with a throng of Critical Mass riders coming south on Broadway.

9. I realized I had to get across the group of cyclists to continue my trip home.

10. As the ride approached 44th Street, I saw that a plastic, orange-mesh barrier had been stretched across Seventh Avenue and that the police were directing riders to turn east on 44th Street. Not wanting to go this way, I slowed down and moved to the west side of the avenue, hoping to get to the sidewalk so I could get away from the rider and walk to Ninth Avenue.

11. All of a sudden, a policeman took hold of my arms from behind and said: "You're under arrest."

12. In a quiet, steady voice, I replied: "Officer, I think you're making a mistake. I wasn't part of the ride. I'm just trying to get home from work."

13. The policeman bellowed: "I DON'T KNOW THAT, DO I? YOU'RE UNDER ARREST NOW."

14. From his tone, I knew I should keep mouth shut or risk the charge of resisting arrest. He wrapped white plastic bands around my wrists and directed me to the paddy wagon.

15. For six (6) hours--until 1:45 a.m.--I was in police custody.

16. My six (6) companions and I were driven around for three (3) hours and sat in the station house for a further three (3) hours. The police treated me with courtesy and respect.

17. At my release, I was given a Desk Appearance Ticket (DAT), and my bicycle was confiscated. I got it back about three weeks later from a warehouse in Brooklyn.

18. At my arraignment, on Monday, June 27, I was charged with Disorderly Conduct (Obstructing Traffic) and Parading Without a Permit.

19. The judge offered me an adjournment in contemplation of dismissal (ACD), which I accepted, simply to avoid further fuss.

20. At no point did the police acknowledge that this was a misunderstanding or apologize for the indignity.

21. A month later, on Friday, July 29, about 7:45, I watched a replay of the whole sad charade from my apartment windows, which overlook the intersection of 14th and Seventh. The police were again arresting Critical Mass riders, photographing them with their bikes, and bundling them into a paddy wagon.

22. The process blocked most of the avenue for half an hour, and cars and taxis were backed up four (4) abreast--horns honking--as far as 23rd Street. The police showed such insouciance about blocking traffic themselves that I wondered if the charge of Obstructing Traffic was the real reason for the Critical Mass arrests.

23. As the handcuffed riders stood lined up beside the van, an open-topped, red sightseeing bus inched by. As the tourists flashed photographs, I was embarrassed for my city and my country.

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

David Pengilly
DAVID PENGILLY

13th day of March, 2007