



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

MICHAEL A. CARDOZO  
*Corporation Counsel*

**SHERYL R. NEUFELD**  
Senior Counsel  
Administrative Law Division  
Phone: (212) 788-1035  
Fax: (212) 791-9714  
sneufeld@law.nyc.gov

April 10, 2007

**By Hand**

Honorable Lewis A. Kaplan  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Five Borough Bicycle Club, et. al. v. City of New York, et. al.  
07 CV 2448 (LAK)

Dear Judge Kaplan:

This office represents the defendants in the above-referenced action. I write in response to the letter of April 9, 2007 to your Honor from plaintiffs' counsel, Steve Vaccaro, and to provide the Court with an errata sheet listing several minor transcription errors in the transcript of Lt. Caneco's April 5, 2007 deposition. Contrary to the assertions set forth in plaintiffs' letter, the testimony given by Lt. Caneco at his deposition on April 5, 2007 does not confirm that there is a conflict between the City's position in this case and the affidavit submitted by Lt. Caneco in City v. Time's Up, New York County Index No. 400981/05. Nor does it provide support for plaintiffs' argument that the City's parade permit requirement is unconstitutional as applied to bicycle processions.

In October 2005, Lt. Caneco executed an Affidavit in the Time's Up case in support of the City's motion for a preliminary injunction enjoining the defendants in that action and all other bicycle riders from continuing to participate in the monthly Critical Mass rides without having first obtained a parade permit from the Police Department. In paragraph 2 of that Affidavit (a copy of which has been submitted to your Honor as plaintiffs' deposition exhibit 3), Lt. Caneco states that the purpose of his Affidavit was to "supplement the plaintiffs' prior

submissions with new information about the conduct of the Critical Mass bicycle ride over the course of the last several months and the ways in which the Critical Mass bicycle ride differs from some of the other bicycle rides that took place during those months [i.e. the summer of 2005].” The comparison of the Critical Mass bicycle rides and the other bicycle rides that took place during the summer of 2005 is contained in paragraphs 11 and 12 of that Affidavit. Specifically, at the start of paragraph 11, Lt. Caneco states: “the conduct of the Critical Mass bicycle riders during the monthly Manhattan bicycle rides differs significantly from the conduct of participants in other smaller rides that have taken place this summer without a permit.” At the conclusion of his comparison of the two types of rides, Lt. Caneco states: “in most situations, the other rides had under one hundred participants which meant that even if the riders did not obey traffic regulations, the disruption of regular pedestrian and vehicular traffic was minimal.” The purpose of this comparison was to provide the Court with factual information to aid its determination as to whether the City was entitled to an injunction prohibiting un-permitted Critical Mass rides although the Police Department did not enforce the permit requirement against several last-minute bicycle rides during the summer of 2005.

As the Court is aware, in January 2007, in part because of Justice Stallman’s denial of the City’s application for a preliminary injunction in the Time’s Up case, the Police Department amended its regulations governing parade permits to clarify that all groups of fifty or more persons traveling together in any manner (e.g., on foot, horseback, bicycle or in a vehicle), are required to obtain parade permits from the Police Department. In conjunction with the City’s opposition to the plaintiffs’ motion for a preliminary injunction enjoining the City from enforcing the parade permit requirement against bicycle processions, Lt. Caneco signed a Declaration setting forth his belief as to the rationality of the fifty-person threshold (a copy of Lt. Caneco’s March 2007 Declaration has been submitted to your Honor as plaintiffs’ deposition exhibit 2). Plaintiffs argue that there is a conflict between Lt. Caneco’s statement in his Time’s Up Affidavit that, unlike Critical Mass, the other un-permitted rides that took place in the summer of 2005 (which had, in most situations, under one hundred participants) caused only a “minimal” disruption of pedestrian and vehicular traffic, and his statement in paragraph 3 of his Declaration in this case that “unpermitted large group bicycle rides (with approximately fifty or more cyclists) may significantly disrupt vehicular and pedestrian traffic and adversely affect public safety.”

There is, however, no such conflict on the face of these statements. Lt. Caneco’s statement that there were less-than-100-person bicycle rides in the summer of 2005 that caused only a minimal disruption of pedestrian and vehicular traffic is not contradicted by his later statement that group bicycle rides with fifty or more cyclists may significantly disrupt vehicular and pedestrian traffic.

As discussed in the declaration of Lt. Dennis Gannon, submitted by defendants on April 2, 2007, even though there are situations where groups of fifty or more bicyclists may not have an impact on vehicular or pedestrian traffic, an across-the-board requirement of a parade permit for all groups of fifty or more will result in an overall benefit to the safety of City residents and visitors. Thus, contrary to plaintiffs’ arguments, it is of no consequence that Lt. Caneco has personally observed only Critical Mass rides and Critical Mass ride splinter groups,

and could not state that group bicycle rides of any particular size will always be disruptive. Lt. Caneco testified that the size of the group alone does not determine the group's impact on traffic and public safety, but that the conduct of ride participants is an important factor in determining the impact of a particular ride. This testimony is consistent with Lt. Gannon's observations that many factors determine the traffic and public safety impact of a particular bicycle procession.

Moreover, plaintiffs incorrectly assert in point 4 of their April 9, 2007 letter that Lt. Caneco admitted that large groups of law-abiding cyclists do not create safety issues. Rather a correct reading of the testimony cited by plaintiffs is that it is Lt. Caneco's opinion that these groups can create safety issues if they do not keep with the flow of traffic. Even assuming, *arguendo*, that the problems caused by the law-abiding group bicycle rides are solely a result of the ways in which motorists react to the groups, the need to protect the safety of those in and around the rides from motorists is ample justification for the parade permit requirement.

The fact that Lt. Caneco believes that certain of the plaintiffs' group rides (e.g. Professor Jackson's yearly midnight ride of 200 to 300 bicyclists and rides occurring at 6 a.m. on a Sunday) are unlikely to pose traffic problems is irrelevant to the determination of whether the parade permit requirement is narrowly tailored. The Police Department's regulations governing parade permits are designed to apply across-the-board to all processions of fifty or more persons without the need for the Police Department to evaluate whether any one particular event would have an impact on traffic or public safety. Indeed, having the Police Department evaluate rides in such a manner would likely lead to a claim by plaintiffs that the regulations vest the Police Department with unbridled discretion to grant or deny permit applications.

Finally, plaintiffs' assertions in point 6 of their April 9, 2007 letter are not worthy of serious consideration. First, Lt. Caneco left his assignment at Patrol Borough Manhattan South at or around the time of the February 25, 2007 Five Borough Bicycle Ride (see Tr. 180:14-24), thus it is hardly surprising that he was not able to explain why the NYPD did not attend the ride. Second, the fact that there are ways in which participants in group bicycle rides can proceed together and comply with traffic regulations does not make it unreasonable for the City to require a permit for groups of fifty or more proceeding together. Indeed, the testimony cited by plaintiffs in point 6 of their letter makes clear that groups of bicyclists can cause safety issues to those around them even when they obey traffic regulations.

Thus, defendants respectfully submit that the testimony provided by Lt. Caneco during his deposition does not support plaintiffs' motion for a preliminary injunction.

Respectfully submitted,



Sheryl R. Neufeld (SK 2728)  
Assistant Corporation Counsel

cc: Steve Vaccaro, Esq.

