

Complaint of Jason Meggs  
Subjects: Officer Libel, BPD #149 and the Berkeley Police Department  
RE: June 26, 2005 Citation

## **Complaint Addendum**

### Factual Description

On June 26, 2005, at approximately 17:06 hours, I was riding my bicycle WB on Allston Way towing a long (8-foot) trailer. Allston Way in that area is a traffic calmed street, with numerous traffic circles as well as stop signs along the path of travel. I was pleased that there was little traffic on the street on that Sunday evening.

Unfortunately, there were also large trucks parked along the way which protruded into the already “substandard width” travel lane. The CalTrans Highway Design Manual specifies a minimum standard lane width of 12 feet. The lane here was as little as 9 feet, and two large trucks limited it even further to as little as 8 feet!

I was traveling with a friend, who was also on a bicycle, and who was my witness throughout.

At the traffic light at MLK and Allston Way, my friend had gotten ahead of me, yet she did not know the directions. We were traveling roughly single file (we were not side-by-side and each was riding where we would have ridden were we alone). She asked me where we were going and I called out to her to follow me, and began a passing maneuver.

There were no vehicles behind us or ahead. I checked behind me to verify what I already knew from my hearing: that nobody was approaching. I moved only slightly to the left to pass – I did not have to move far because she was riding dangerously close to the “door zone” despite my past advice.

In executing my passing movement, I did not cross the dashed yellow line indicating that Allston Way on that stretch is a passing zone. Furthermore, I had every right to be traveling along at that position on the roadway even if I were not passing, because CVC 21202(A) specifically allows a cyclist to take the lane in the event of:

- a) Traveling at the normal speed of traffic (which we were close to);
- b) When reasonably necessary to avoid conditions (which I had to do, given that the roadway is narrow and visibility obstructed by parked vehicles, and I had an unusually long trailer attached to my bicycle which can surprise people);
- c) When approaching a place where a right turn is authorized (I intended to make a right turn soon);
- d) When traveling in a substandard width lane (which it was).

Because in this case I actually was passing, I had the further right to move over in the lane because of that fact. The entire text of CVC 21202(A) is pasted below. It is one of the best known bicycle laws in the world. I have advised the BPD of its use many times

in hopes that they would educate their officers and reduce the needless issuance of false and harassing citations to bicyclists in Berkeley.

21202. (a) Any person operating a bicycle upon a roadway at a speed less than the normal speed of traffic moving in the same direction at that time shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

(1) When overtaking and passing another bicycle or **vehicle** proceeding in the same direction.

(2) When preparing for a left turn at an intersection or into a private road or driveway.

(3) When reasonably necessary to avoid conditions (including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb or edge, subject to the provisions of Section 21656. For purposes of this section, a "substandard width lane" is a lane that is too narrow for a bicycle and a **vehicle** to travel safely side by side within the lane.

(4) When approaching a place where a right turn is authorized.

(b) Any person operating a bicycle upon a roadway of a highway, which highway carries traffic in one direction only and has two or more marked traffic lanes, may ride as near the left-hand curb or edge of that roadway as practicable.

Within moments of my initiating my lawful project of passing the other cyclist, we both heard a rushing of a fast car coming up behind us, terrifying us. A siren blared out further scaring us. I was pulled over at Jefferson by a marked BPD patrol car.

The officer, S.M. Libed, BPD #149, parked his car diagonally across the lane, impeding traffic far more than my moving bicycle would have even if there had been traffic behind me to impede, and for far longer.

Libed emerged from the car and appeared to be very agitated. He would come at me and then rush away, alternately bursting out with accusations and questions and rush away before I could answer. Repeatedly, I tried to engage him in a civil conversation but he could not hold still for it.

At one point early on he claimed I had been blocking traffic and I protested that there had been no traffic behind me. At that point a grey car had arrived and was slowly trying to navigate around the officer's diagonally parked patrol vehicle. The officer claimed that the car had been blocked and offered me the car's license plate, which I tried to write down as it passed. He accused me of causing it to have to endure the confusion of the traffic stop. He would not explain how it ended up behind his patrol car, at that point some time after he had stopped us. He never gave me the license of the car.

He insisted over and over again that I violated the law by not riding my bicycle "as close to the *curb* as possible" (emphasis mine). The fact is that this dangerous misconception of bicyclists' duties is pervasive despite many appeals to the police to be proactive and take steps to understand and care for bicyclists' rights. It is very dangerous to ride at or near the curb, for many, many reasons including visibility issues, the erratic riding that takes place, the danger of a pedal striking the curb, the enhanced risk of being doored

(which can be fatal, and causes serious injuries on a daily basis in the Bay Area), the increased risk of a pedestrian or motorist leaving the curb and crossing the path of the bicyclist, the debris and disjointed pavement at the curb, and more.

He claimed to be “an avid cyclist and mountain biker and I go to the gym,” as if that makes it okay to take his destructive action (against bicyclists, who are already so discouraged and at risk, yet provide so many substantial public benefits).

When I told him he was issuing a false citation and that I had done nothing wrong, and he would not discuss it, I informed him that I would have to see him in court and at the PRC.

He then erupted, “I know who you are and I have no fear of the PRC.”

In his agitation he challenged me in an exasperated manner, “Will you sign a ticket or should I start getting ready to take you to jail?” I had done nothing to indicate that I would not sign a citation; I was merely trying to educate him that the citation was improper and had no legal basis. I informed him that I would sign a citation if he was going to issue me one.

He then made the rationale that a citation was warranted because “a bicycle is a car” and “you couldn’t do that in a car.” I was confused. He explained further, “If two cars were driving side by side would that be okay?”

I and my friend tried to honestly answer him: it depends on the situation. How many lanes are there? Is it a passing zone? What is going on and what are they doing? What are the traffic conditions? And most importantly, how does that relate to my citation? I was still honestly confused about what he was trying to say and what he thought I had done wrong.

I informed him that bicycles are not in fact vehicles under the vehicle code and have our own special rights and responsibilities, although it is true that many of them are the same as those for vehicles such as cars. I told him he was making a mistake and to please get a vehicle code so I could show him and smooth the whole misunderstanding over.

He went and got not a Vehicle Code but an outdated “cheat sheet” of codes which in my experience do everyone a disservice by oversimplifying the law. His was a “QWIK-CODE 2002” edition of the Vehicle Code. This incident occurred in 2005.

He found their small and inaccurate summary of CVC 21200 and remarked that it proved his point. That is a code which in its complete form, grants that “every person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle [under some parts of the Vehicle Code], except those provisions which by their very nature can have no application.” His code was something a lot more simple, but I didn’t get a chance to read it because he was so agitated and kept coming and going and pulling it away from me. He repeated that “bikes are the same as cars.”

Evidently he had a faith-based belief that bicyclists may not ride two-abreast under any conditions. He is absolutely wrong about that. Even if I weren’t passing, I would have

the right on Allston Way at that location to ride two abreast due to the substandard lane width. As cited above, the law (CVC 21202(A)), says a substandard width lane “is a lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.” It is only sensible that two bicycles, which are so much more narrow, less dangerous, and better suited to one another than a motorcar, may sometimes safely be ridden side-by-side when a bicycle and motorcar could not do so.

When I could get his attention, I pointed out to him that the proper code dealing with bicyclists’ lane positioning was CVC 21202(A), not CVC 21200. (Thanks to that, perhaps, this is what I was charged with – the price of trying to be honest and communicate with the police for the public good.)

Around then officer Libed began to make excuses. He said, “Look, I’m not an expert on this stuff. Have you ever seen the Vehicle Code? It’s like this thick! [Holding hands to show how big it is.] I have to use things like this [holding the cheat sheet summary]. My specialty is *drugs*.”

Officer Libed would repeat that he was an “expert on drugs” and the like a number of more times. The fact is that he seemed to be literally *on drugs*, specifically under the influence of some kind of powerful stimulant, evidenced by his short attention span and agitated, exasperated, irrational and impatient behavior.

As he issued the citation, he claimed, “I would have just given you a warning, but since [you challenged me, I’m giving you a citation].”

Officer Libed insisted I answer this question: “Let me ask you this: if the commissioner finds you guilty, will you still insist on riding like that?” He seemed to be implying that I would suffer additional repercussions if I said yes or ever operated my bicycle away from the curb in the future (which of course I will have to do and all bicyclists do as a matter of safety and proper practice). As an honest person, I could not cave to his threat, so I told him very reasonably that a commissioner’s decision is not the final word on a matter of law and that I would appeal any finding of guilt for the betterment of the public good.

Afterwards, I took notes on my friend’s impression of the incident: “He was coming at you and being aggressive,” she said. “Both of us were so shocked, neither of us said anything for a while.” “The guy seemed like he was on speed or something.” “He wouldn’t listen to anything you said.” “He had a bad attitude. I had a hard time focusing on what he was saying because his demeanor was so hostile.” “Although I’m glad I didn’t get a ticket too, but on the other hand, because you were passing me, had I not been there you wouldn’t have been in the road.” “He didn’t recognize me until the very end [when he called me] ‘female cyclist.’ I was completely ignored. There’s just something not right about it to me.” “And at first his attitude [upset me]. I nearly said something myself. I’m accustomed to police being very nice to me. And I don’t think you were rude to him, at all.”

### Lane Width Conditions

Unfortunately, I did not have a camera available to take photos, but I took fairly reliable measurements of the roadway width at points before, near, and after the stop.

The place we were stopped was between two large trucks.

The first, east of where we were stopped, was a large GMC with CA license 5G19610, a white box truck. It was parked near the curb at a bad angle, so the rear wheel was out in the lane. There were only 8 feet at the rear and 10 feet at the front to the center line. Remember, a minimum standard lane is 12 feet, and other criteria can be used to determine when a lane is unsafe even if it is 12 feet or more in width.

Closer to where we were pulled over, the lane was as little as 9-feet from the center to the nearest parked car. (None of these measurements include side mirrors, which stick out on the large trucks.) The car was a grey Toyota Camry, license 5AIZ098, with the left front wheel 9.5 feet from the centerline (midway between the trucks).

Just beyond us was another truck, a very wide, graffiti-covered white Isuzu NPR HD, license 6S60053. It was roughly 9 feet from the center.

#### Past participation in bicycle demonstrations

I realize that I have participated in bicycle demonstrations (“Critical Mass”) prior to this citation and that the opponents of bicycling have attempted to label these demonstrations as “blocking traffic.” The answer most participants give to this is, “We are traffic.” The equity issues and first amendment issues are very real, and the intent is not to cause anyone inconvenience but to reclaim space for safety, community, and an important message about our environment, health, peace, and more. In general these demonstrations are met with positive response in Berkeley and function much as a parade or other street protest, except that we actually move traffic along and clear areas faster than do foot demonstrations.

Lest anyone on the commission be influenced to a biased and uninformed position based on the knowledge that I participate in these demonstrations, I wish to state that my role in Critical Mass is often as a mediator and liaison, a legal observer, and as someone who works to reduce conflicts and de-escalate situations when motorists become irate, hostile, and even violent. The same is true of the long history of police repression of the events.

It is critically important to understand that everyday life is very different from riding unimpeded and unharassed with hundreds of cyclists, and my approach there is very different. While it is important not to practice from the famous “Bicyclist Inferiority Complex” and to exercise our right to use the shared roadways, I am very sensitive, even on a traffic calmed street such as Allston where I was pulled over, to the presence of motorists because they can quickly become irate and even violent if they perceive a bicyclist as impeding them or in any way offensive to them, no matter how lawfully a bicyclist is behaving. I have seen many instances of this violence and discrimination in my life, ranging from being ordered onto the sidewalk, hit by thrown eggs, being honked and shouted at, swerved at, verbally threatened, chased with a car, seen people struck by cars, and more. This happens in everyday life, not just at the demonstrations (which are

actually trying to call attention to the problems and make them better). I have even repeatedly been threatened with guns held by motorists. So, it isn't a joke. It's a shame the police department has been so unreceptive to making conditions better for those who undertake these risks to promote peace, equity, public health and overall sustainability. Yet so many times the police have either refused to help or actually aided and abetted motorist perpetrators of crimes of violence and discrimination against bicyclists and pedestrians. My list of these examples is far too long to try to recount here.

### **SUNSHINE NEEDED: Expose the crack-down on bicyclists**

There is ample indication that a "crack-down" on bicyclists has been underway. Certainly, a pattern and practice of discriminating against myself and others for being bicycle activists and for exercising our constitutional rights has occurred in Berkeley over a period longer than a decade (the PRC has agreed with many individual claims to that effect). Most recently, I had been happily without a citation for years (a major relief) yet just received two, including this one, in about as many months. As a representative of the Bicycle Civil Liberties Union, and an active member of the bicycle community, I have been hearing of many, many more citations than usual over the past several months.

I appeal to the Police Review Commission to investigate this as part of my complaint. If need be I then will issue a policy complaint separate from this complaint. Specifically, is there a crack-down or periodic crack-down on bicyclists? Is this crack-down being done without proper awareness of bicycle rights, and is the net effect destructive to the City's adopted goals of promoting, encouraging, and protecting bicycle travel?

Please use your rare ability to achieve the utmost level of sunshine on our all-too closed police department and find out what the statistics over time have been for citations issued to bicyclists versus motorists so we can better assess whether there is a campaign underway – a campaign which whether officially ordered or simply the act of rogue cops, may be operating without a sound basis in the actual rights and responsibilities of bicyclists.

In particular, for this specific incident, I wish to know what the pattern of citations for officer Libed would be. Has he ever cited a bicyclist before? How often? Why me?

An aside: The Berkeley Police have over the past 13 years shown themselves to pay special attention to how they can cause the most emotional harm, e.g., by attacking on special anniversaries, destroying certain property, targeting certain individuals. In writing this complaint I had to recall that the same day in 1998 (June 26, 1998) was "Bicycle Celebration Day," a day when a bill I had a great deal to do with, AB 2038 (Migden), was signed by the Governor. Yet on that day I was falsely arrested, injured, and property was stolen from my by San Francisco police (who are known to coordinate and confer with Berkeley police on issues of bicycle demonstrations). I was targeted when I pulled to the side of the road with a video camera to copwatch for a bicyclist who I suspected had been illegally stopped for harassment purposes. The citation which is the subject of this complaint was on the seven-year anniversary of that day and came as quite a surprise. Could there be a connection? Given officer Libed's quick admission that he was aware of who I am and was not scared of the PRC, I have to wonder.