

# **SPYING ON DEMOCRACY**

Government Surveillance, Corporate Power, and Public Resistance

**HEIDI BOGHOSIAN**

Foreword by **LEWIS LAPHAM**

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**Government Surveillance,  
Corporate Power,  
and Public Resistance**

Heidi Boghosian

Foreword by Lewis Lapham



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City  
Lights

The First Amendment was designed to allow rebellion to remain as our heritage. The Constitution was designed to keep government off the backs of the people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance. The Bill of Rights was designed to keep agents of government and official eavesdroppers away from assemblies of people.

—From Justice William O. Douglas's  
dissenting opinion (with Justice Thurgood  
Marshall concurring) in *Laird v. Tatum*,  
408 U.S. 1 (1972)

# City Lights

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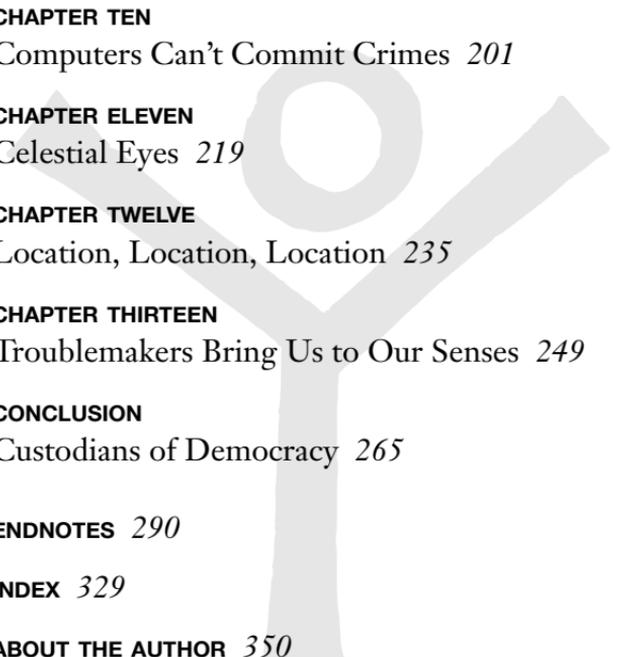
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## INTRODUCTION

Alexander the Great amassed an empire in the fourth century B.C. with innovations in military tactics and strategy that continue to be used today. Spy networks, including soldiers counting enemy camps at night to plan counterattacks, were essential to his maneuvers. But while Alexander used stealth tactics and reconnaissance against enemies at war, corporations and our government now conduct surveillance and militaristic counterintelligence operations not just on foreign countries but also on law-abiding U.S. citizens working to improve society. Bicycle-riding environmentalists in New York City, journalists raising awareness of flawed national security initiatives, and lawyers representing unpopular clients are but a few examples of individuals whose lives are subjected to monitoring, infiltration, and disruption once they are seen as a threat to corporate profits and government policies.

From the minute you wake up, your everyday activities are routinely subject to surveillance. Retailers capture consumer data and sell it to data aggregators, telecommunications companies hand over records of customer

calls to government agencies, and personal data shared on social media platforms is readily available to businesses that may share it with the authorities.

Whether you are the head of the Central Intelligence Agency arranging a secret sexual encounter or an ordinary citizen shopping at Target, your interactions with others are under a staggeringly comprehensive network that tracks where you go, how long you stay, and what you browse, read, buy, and say. An intelligence-gathering infrastructure that commands access to, and control over, so much personal information is the hallmark of a totalitarian regime.

Historically, successful government spies are acclaimed as heroes, while those caught spying for the other side face harsh punishment, including execution. The lauded ones were masters of deception, betraying trusts and confidences to gain invaluable intelligence. In similar fashion, government and corporate authorities abuse trusting Americans by monitoring them around the clock and amassing their personal data. The more an individual draws attention to a corporate or government misdeed, the more that person is subject to intrusive observation.

This book documents the way relentless surveillance makes people in the United States less free. As government agencies shift from investigating criminal activity to preempting it, they have forged close relationships with corporations honing surveillance and intelligence-gathering techniques for use against Americans. By claiming that anyone who questions authority or engages in

undesired political speech is a potential terrorist threat, this government-corporate partnership makes a mockery of civil liberties. The examples in these pages show how a free press, our legal system, activists, and other pillars of a democratic society—and even children—suffer as a consequence. As the assault by an alignment of consumer marketing and militarized policing grows, each single act of individual expression or resistance assumes greater importance. As individuals and communities, we need to dismantle this system if we are to restore and protect our civil liberties.

### **From Outrage to Complacency**

Spying on Americans is not new. For almost all of the twentieth century, hysteria on the part of the Federal Bureau of Investigation and other government intelligence agencies fueled suspicion of domestic dissidents and ordinary citizens. Cold War fears under J. Edgar Hoover spawned counterintelligence programs to disrupt domestic peace groups and to discredit and neutralize public figures such as Martin Luther King Jr. and leaders of political movements such as the Puerto Rican Independence Party.

With revelations about covert spying in the 1970s, the public was galvanized in outrage and demanded investigations. In response, the FBI ended its covert counterintelligence programs. An era of regulation of political surveillance was launched, with Congress making permanent the House and Senate Intelligence Committees.

In 1976, Attorney General Edward H. Levi established guidelines limiting federal investigative power into the First Amendment activities of Americans.

Half a century later, reports of nationwide surveillance and First Amendment infringements elicit scant outcry, and hard-fought legal protections have been all but eliminated amid fears of terrorism. Beginning in 1981, Ronald Reagan reauthorized many of the domestic intelligence techniques that had been restricted just a decade earlier. After the 1995 attack on the Alfred P. Murrah Federal Building in Oklahoma City, Bill Clinton's Antiterrorism and Effective Death Penalty Act of 1996 authorized the targeting of individuals and groups for surveillance, not on the basis of acts they had allegedly committed, but on their "association" with other groups or individuals. Days after the 2013 Boston Marathon bombing, nearly one million residents sheltered in place as authorities locked down Boston during a high-profile hunt for one 19-year-old suspect. After arresting him and announcing that a public safety danger no longer existed, the Department of Justice nevertheless invoked a rarely used public safety exception to the Miranda obligation to inform suspects of their rights.

The opportunity to abolish any remaining impediments to domestic spying was laid at the feet of the George W. Bush administration after 9/11. FBI agents can now visit public places, attend public events, and install surveillance devices to gather information on individuals and organizations without any indication of criminal activity.

The Department of Homeland Security was created, providing a massive injection of funding to state and local police departments to identify terrorist threats, and bolstering an Internet surveillance apparatus. Federal and state agents access private databases and can search and monitor chat rooms, bulletin boards, and websites.

Government officials insist that mass surveillance makes us safer. In the absence of substantive national debate, most of the population—96 percent of which approves of public surveillance cameras, according to a 2009 Harris Poll survey—seems convinced of that assertion. The events following the Boston Marathon attack revealed to the world the extent to which individuals' movements are monitored and recorded from multiple angles. Lord & Taylor, the country's oldest high-end retail store, was among the many retailers that provided police investigators with tapes of individuals walking on surrounding sidewalks. When surveillance tapes help lead to the apprehension of criminal suspects in terrorism cases, as happened in Boston, lawmakers are quick to urge installation of even more monitoring devices. Exploiting public fears of terrorism, New York Republican representative Peter King praised surveillance cameras as a way to keep Americans safe from "terrorists who are constantly trying to kill us."

This convergence of government and business intelligence operations has created all the elements of an Orwellian mass surveillance network: a trusting and fearful public, a shift to preemptive policing justified by op-

opportunistic citing of a nebulous enemy threat, domestic use of military equipment, and communications devices that provide direct portals into private transactions. Each component element is formidable. Together, they are a nightmare for democracy.

### **Normalizing Cultural Obedience through Surveillance**

Every day you leave your home, your image is caught on surveillance cameras at least two hundred times, it is estimated. Little public debate has addressed the possible consequences of nearly continuous surveillance. Cameras monitor us while we shop, ride elevators, tour museums, stand in line at banks, use ATMs, or merely walk down streets, desensitizing us to unceasing observation and recording.

People growing up in the digital age may have a hard time imagining life without the self-consciousness and self-censorship prompted by today's surveillance state. Others may recall a time when the nation expressed outrage when its citizens were "bugged," trailed, or tracked. Today, only those living off the grid in rural areas of places such as Montana or Alaska are exempt from being monitored all the time. If they are determined to be "persons of interest," however, they too can be tracked down and monitored.

A new generation of advertisement-driven Americans is persuaded from an early age to buy cell phones, tablets, and computers with built-in monitoring capability. Disney and McDonald's, along with many other cor-

porations, lure children into online worlds or amusement parks where personal information is collected in exchange for special rewards. At the same time, policymakers, quick to approve sweeping counterterrorism measures, have dismantled many levels of legal safeguards that evolved over time to protect individuals' civil liberties.

Normalization is the process by which we accept and take for granted ideas and actions that previously may have been considered shocking or taboo. Michel Foucault wrote that modern control over society may be accomplished by watching its members, and maintaining routine information about them. Foucault emphasized that Jeremy Bentham's eighteenth-century panopticon, a continuous surveillance model for prisoners who could not tell if they were being watched, exemplified an institution capable of producing what he called "docile bodies."

Distracted by the rush and convenience of information technology, few of us discern that opening a window into our personal transactions helps shape a culture of conformity and normalizes the nefarious business of domestic intelligence gathering.

### **Military Applications Turn Homeward**

Spying on democracy at home is seamlessly connected to military intelligence and intervention abroad. The creation of the Department of Homeland Security and intelligence coordinating entities known as fusion centers encourages collaboration between branches of the United States military, a host of government agencies, and profit-

seeking corporations in collecting, storing, and acting on information about citizens.

Weapons of war used for national defense abroad are now being deployed against people at home. Military hardware such as drones, originally intended for tracking and killing enemy combatants in the battlefields of Iraq and Afghanistan, are now used on U.S. soil.

Seeking to avoid revenue loss from reduced military contracts, electronics and computer companies have expanded into new markets with equipment originally developed for military use. Although better known for calculators and other consumer electronics, companies such as Texas Instruments started out by selling computer and surveillance systems to governments. Increased sophistication of surveillance, identification, and networking technology (including ID cards, radio-frequency identification chips, data matching, biometrics, and various other systems) began to be used—for efficiency's sake—on such groups as immigrants, military personnel, and convicted offenders. Gradually they came to be employed more widely, often under pressure from manufacturers and their lobbyists, making it easier to conduct routine and widespread surveillance of broad segments of the population.

As military equipment is repurposed for domestic uses, more and more civilians are being classified as threats to national security. Domestic dissenters are no longer labeled “subversive” as they were in the 1970s. Now they are “terrorist” threats. Police used to photo-

graph and videotape activists. Now they operate “Domain Awareness Systems” and roll “SkyWatch” mobile surveillance towers to public spaces on a daily basis. One such tower was used to monitor the Occupy movement’s activities in New York’s Zuccotti Park and remains a permanent fixture there, keeping tabs on those who come to the park to sit, talk, play, organize, and engage in free speech.

Over a decade after the 9/11 attacks, the government’s methods for securing freedom are informed by little, if any, public debate about the consequences. Perpetual war, paid for on a credit card, threatens national security through economic debt and instability, thinning the lifeblood of democracy through the increasing intrusion of a surveillance state.

### **Civil Liberties Ceded to Consumerism and National Security**

Political free speech isn’t the only thing that triggers monitoring. Corporations no longer spy merely to protect or steal trade secrets. Ruffling corporate feathers can prompt not just surveillance but more aggressive reactions. Businesses spy to stop people from exposing them and holding them accountable for harmful environmental, financial, or labor practices. When environmental and animal rights advocates scored successes in bringing attention to harmful corporate policies, the FBI called them domestic terrorists. In an era when data is money, corporations are increasingly committing acts of infiltration and espionage against individuals, volunteer

groups, and nonprofits that could hinder revenue or bring into question corporate reputations. The range of targets is wide and diverse. Lucrative intelligence-related contracts and equipment specifically designed to afford police easy access to customer information blur the lines between law enforcement charged with protecting the public and corporations seeking to profit from it.

The surveillance net ensnares once sacrosanct relationships. Attorney-client privilege—the ability to communicate freely in private with a lawyer—is now subject to monitoring, especially for individuals who have expressed views critical of corporations and government policies. Journalists who report on harmful or illegal actions by corporations or government agencies have their phone records subpoenaed in efforts to find confidential sources.

“Life, Liberty and the pursuit of Happiness”—the meaning of these hallowed words is undermined and challenged by the rise of the national security state. Our daily experience as Americans is, increasingly, less about freedom and more determined by credit reporting, consumerism, militaristic internal security, and the rise of corporate-government domination over what is left of the public space and the civic powers available to us within it. Supreme Court Chief Justice Earl Warren’s observation in the 1967 case *United States v. Robel* rings true today: “It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties—the freedom of association—which make the defense of our nation worthwhile.”<sup>1</sup>

## **Going Dark**

The FBI began planning a multimillion-dollar secret surveillance unit in Quantico, Virginia, to invent new technologies to help government authorities eavesdrop on Internet and wireless communications as early as 2008. The Domestic Communications Assistance Center (also referred to as the National Domestic Communications Assistance Center) is to be staffed with agents from the U.S. Marshals Service and the Drug Enforcement Administration. Along with countless gigabytes of data afforded by wireless providers and social networks, it will house customized surveillance technologies targeting specific individuals and organizations.

The unit was originally conceived to combat a “going dark” problem. Going dark means that as communications shifted from telephones to the Internet, wiretapping became more difficult, with investigations encountering delays in executing court-authorized eavesdropping, as communications companies were not mandated to design backdoor ports of entry. The FBI told Congress that the problem was sufficient reason to expand the Communications Assistance for Law Enforcement Act (CALEA) of 1994. CALEA required telephone companies to design their systems so that law enforcement could eavesdrop when needed. The proposed expansion calls for a variety of computer programs to be designed with online communication capacities that will afford police similar backdoor means of entry.

The Department of Justice, in a funding request for

2013, noted that the Domestic Communications Assistance Center will facilitate sharing of expertise between federal, state, and local law enforcement agencies as well as telecommunications companies looking to centralize electronic surveillance.

### **Dismantling the Surveillance Infrastructure**

In George Orwell's *1984*, the all-seeing state is represented by a two-way television set installed in each home. In our own modern adaptation, it is symbolized by the location-tracking cell phones we willingly carry in our pockets and the microchip-embedded clothes we wear on our bodies. For every way in which a microchip or cell phone might improve daily life, other sinister applications give big business and government authorities increased access to and power over our lives. The ubiquity of such devices threatens a robust democracy. Rather than advancing freedom and equality, inescapable surveillance enforces a form of authoritarianism that undermines both. It degrades the ability of members of society to challenge and organize against government and corporate injustices. The loss of cultural freedom stifles individual creativity and the unfettered community interaction necessary to keep power in check and to advance as an evolving society.

Constant surveillance influences how we live, connect, and learn. It impacts how we exercise freedom and contribute to democracy. As the state and big businesses increasingly monitor our lives, challenges to

their authority are increasingly portrayed as a gateway activity to more ominous and intolerable threats. Political resistance, whistle-blowing, investigative journalism, and social and environmental advocacy of all kinds, by their very nature, question and challenge authority. They can now attract resources and responses associated with counterterrorism operations, as seen with the coordinated national repression of the nonviolent Occupy movement. An increasingly militaristic national climate, and the symbiotic corporate culture that profits enormously from it, are now virtually uncontested fixtures in the American experience.

As individuals, as communities, and as a society, we must dismantle the surveillance system if we are to protect and advance the basic conditions required to live our lives in real freedom. To accept anything less out of convenience or fear would be to embrace a grim and stunted future. For the more we accept that all kinds of information about us and our everyday lives is recorded, the more we succumb to the potential abuses of cyber-surveillance. In short, we run the risk of our civil liberties, to borrow the FBI's term, "going dark."

# Lights

## Trafficking Imagination in the Streets

New York City Police Commissioner Raymond W. Kelly has said that the helicopters in the New York City Police Department's aviation unit are essential for fighting terrorism. It was disconcerting, then, when an NYPD chopper equipped with an infrared camera hovered several hundred feet above lower Manhattan in October 2004. Hundreds of officers filled the streets, twenty buses stood by to transport prisoners and their property, and the deputy commissioner for counterterrorism was consulted, as was the department's organized crime unit.<sup>1</sup> Startled bystanders witnessed a series of fast-moving operations that ultimately cost the city millions of dollars in personnel, equipment, overtime, and legal settlements.

But it was not people plotting armed attacks or an even remotely equivalent danger that the authorities were tracking on that and several other days. The targets of the massive surveillance operation were merely New Yorkers on bicycles, sustainable energy advocates who imagine a cleaner, quieter, and healthier city through alternative and nonmotorized transportation. In the eyes of the po-

lice and partnering corporations, however, these individuals represented a significant threat.

### **Using Public Space for Community Activities**

Like a festival on wheels, hundreds of bicyclists of all ages zigzagged through the congested streets of Manhattan. When they reached their destination—bustling Times Square—they quickly clustered together and, in an orchestrated display of exuberance and solidarity, lifted their bicycles high above their heads.

From the beginning to the end of the ride, scores of NYPD officers surrounded the bicyclists from virtually every angle: a helicopter in the air, and vans, bicycles, and scooters on the ground. This escort monitored the riders not only to capture faces on film but also to analyze the group's patterns and movements. As police officers leaned out of the windows of moving vehicles to video-record riders, they gave a public face to the previously covert practice of intelligence gathering. Video evidence turned over to the *New York Times* would later reveal that undercover officers posing as bicyclists had infiltrated the group.<sup>2</sup>

The story of the NYPD's hostile reaction to the monthly bicycling events called Critical Mass paints an unsettling portrait of how modern state tactics have evolved. Corporate and police interests, often enabled by the growing acceptance of surveillance, meet community activities with a threatening display of force. Critical Mass culture leans heavily toward a do-it-yourself,



*Members of Time's Up join in a spontaneous Bike Bloc—a jubilant gathering similar to a Critical Mass—in New York's Union Square.*

PHOTO: PETER MEITZLER

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anticonsumerism, and antiauthoritarian ethic, which may help explain the police's heavy-handed tactics.

Monthly Critical Mass rides began in San Francisco in 1992 and quickly spread to more than three hundred cities around the world. Participants describe the ride as a fun way to increase sustainable transportation, make riders feel safer, and promote the joy of cycling. Many credit Critical Mass with raising awareness of alternatives to motorized transportation, and helping to double the number of bicycle commuters in New York City, in specific, between 2007 and 2011.<sup>3</sup>

Chris Carlsson, historian and often considered a Critical Mass “cofounder,” frames its symbolic import: “Critical Mass has done much more than simply promote daily bicycling. It has challenged the organization of urban space, the prioritization of motorized transport over other uses, and the preponderant emphasis on commerce at the expense of public life outside of the narrow logic of buying and selling. Moreover, it has been an incubator space for countless relationships, organizations, and creative projects that have emerged in the new friendships forged rolling through the streets together in Critical Mass.”<sup>4</sup>

And that prioritization of motorized transport is just what corporations rely on for profit. What better way for corporations to develop marketing strategies than to track individuals through automobile movements and generate consumer demographics as they drive from place to place? On foot or on a bicycle, citizens have greater freedom from monitoring and control than when in cars.

In New York, bicyclists represent a symbolic challenge to car culture. With fewer cars, not only would gas consumption plummet but insurance companies would lose profits; the state’s income stream from registration fees, tags, titles, fuel-related costs, parking, and traffic tickets would wither. As in Amsterdam and other bicycle-friendly cities, people would interact more in quieter public spaces and would be unencumbered by tracking devices that may be built into automobiles.

It is thus not entirely surprising that for over a de-

cade the New York City Police Department spent lavish amounts of time, personnel, and resources to monitor and disrupt the activities of individuals engaging in alternative transportation advocacy and bicycling events. Police tracked, arrested, assaulted, and infiltrated riders, devoting to the effort a level of resources usually reserved for terrorist threats. The travails of these individuals and groups underscore a simple truth: when bicycle riding is used for political expression and advocacy, authorities attempt to criminalize it. The more popular and independent such movements are, the likelier it is that state forces will engage in intimidating tactics to undermine or stop them. When members of a group know or even just suspect that they are under surveillance or infiltrated, democratic group dynamics are inexorably altered. In many cases, otherwise resilient groups may dissipate over time.

### **Corporations Co-opt a Grassroots Movement**

After several fits and starts, and with great fanfare, in 2013 a public bicycle sharing program was launched in automobile-centric New York City. Hundreds of similar programs exist in cities around the world, providing free or affordable alternatives to motorized transportation. In New York, the initiative began with a fleet of six thousand bikes stationed at three hundred locations. As is standard practice, a catchy corporate name was bought. For \$41 million, naming rights were awarded to the multinational financial services giant Citigroup, which runs Citibank—and Citibike was born. Another financial



*Citi Bike hosted a series of demonstrations—this one at Tompkins Square Park—in 2012 to introduce New Yorkers about the bike share program sponsored by Citi (CitiBank) and MasterCard.*

PHOTO: SHAWN G. CHITTLE

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titan, MasterCard, gave \$6.5 million. At a press conference announcing the program, Mayor Michael Bloomberg referred to it several times as “Citibank” instead of “Citibike.” In introducing the bank’s CEO, Vikram Pandit, the mayor said: “The person who I have the pleasure of introducing next hopes everyone confuses Citibike with Citibank.”<sup>5</sup>

Both men heralded the bike-sharing program as an

important, entirely new, 24/7 transportation network, emphasizing that the bank was bringing a new level of sustainability to the city. But this upbeat conference and seemingly positive development rewrote a seminal chapter in history and credited the City of New York and its corporate partners for improvements won by the very residents who were once tracked as if they had learned how to ride bicycles in a terrorist training camp.

Citibike's blue bicycles serve as roving corporate advertisements, mobile reminders of the relentless assault against community use of public space. Yet when ordinary New Yorkers promote bicycle-friendly policies they are harassed by police, followed by helicopters, and subjected to clandestine and illegal surveillance.

As other examples in this book attest, police infiltration and disruption has the dual effect of splintering social networks while sometimes showcasing activist gains. In some instances, corporate and government alliances take credit for hard-fought achievements, brand them as their own, and allow corporations to reap the profits. Such was the case with bike sharing in New York City.

### **Law Enforcement “Obsessed with the Rides”**

Government response to New York bicycle rides reveals how threatening community organizing can be to power structures. Critical Mass rides took place in Manhattan for a decade and were publicized by the grassroots environmental organization Time's Up and even the New York City Department of Transportation. By 2004, thou-

sands of New Yorkers had participated in the events, attracting scant police response.

Police operations escalated markedly, however, as New York prepared for the 2004 Republican National Convention. It was a politically charged moment. Police Commissioner Ray Kelly and NYPD intelligence chief David Cohen “decided they would have to push beyond what many Americans and New Yorkers had come to think of as acceptable boundaries for police investigations of political groups.”<sup>6</sup>

When Kelly was appointed commissioner in 2002, he made it a priority to weaken long-standing court-imposed restrictions on spying on political groups. In persuading a judge that “the entire resources of the NYPD must be available to conduct investigations into political activity and intelligence-related issues,”<sup>7</sup> he cleared the path for the Intelligence Division to “go out and find the groups, conduct surveillance, and penetrate them.”<sup>8</sup> In the run-up to the Republican National Convention, detectives traveled to more than ten states “to hang out with the loosely organized anarchists, direct action provocateurs, libertarian clowns, conscientious protesters, and potential killers setting their sights on Madison Square Garden.”<sup>9</sup> Such rhetoric reveals an open effort to propagate false associations between constitutionally protected political expression and criminal acts such as homicide.

Web-based organizing preceding the Convention had strong, often hyperbolic, critiques of corporate influence on society. Calls to “shut down the RNC,” how-

ever, are afforded the same First Amendment protection as singing “God Bless America.” Nonetheless, police warned residents that violent anarchists were coming to town, even releasing a list of specific individuals. They threatened hundreds of mass arrests and made good on that promise, engaging in often violent crackdowns on the monthly Critical Mass rides and on individual bicyclists in general. Police arrested nearly three hundred people at the August pre-RNC ride attended by more than five thousand. Arrests continued days later, and police proclaimed hundreds of bicycles to be “abandoned property” and carted them away in trucks, after using massive bolt cutters to break the locks securing them in place.

The tone of media coverage changed when reporters learned how much it was costing taxpayers to have the NYPD spend lavishly on actions that included infiltration, unlawful mass arrests, and police perjury. A *New York Times* editorial focusing on the disproportionate police resources devoted to Critical Mass commented: “The New York police, who deem Critical Mass an illegal parade and have drafted a law that would essentially ban it, have seemed obsessed with the rides since one coincided with the Republican National Convention in August 2004. . . . An amazing array of police resources—scooters, vans, unmarked cars, and helicopters—chase a quarry that looks like fish in a barrel. Police vehicles race the wrong way and on sidewalks, posing a greater public danger than the bikers.”<sup>11</sup>

Police harassment of Critical Mass continued for at

least two years after the Republican National Convention. From fall 2004 until spring 2006 the NYPD arrested more than three hundred people, charging them with disorderly conduct and violation of newly created parade permit laws. Often police officials told the media that riders prevented emergency fire and medical vehicles from reaching their destination, when in fact bicyclists quickly moved out of the way when such vehicles approached.

Time's Up was a natural advocate for and active partner with Critical Mass. Founded in 1987, the New York-based nonprofit uses educational outreach and creative direct actions such as moonlight rides through Central Park and Polar Bear Rides to raise awareness of climate change and to promote what it calls a "less toxic" city.

Authorities engaged in covert spying on and infiltration of Time's Up in 2004 and for years after. Undercover police joined Time's Up rides and free events; hours after activities ended, they also attended social gatherings.<sup>12</sup> The aggressive ways in which the group was spied upon led many people to assert that surveillance was being used as an intimidation tactic. For years, members reported to the executive director that police vans were parked around-the-clock in front of the organization's street-level space. More than twenty photos of suspected undercover police officers were taped to the refrigerator of Time's Up's Houston Street headquarters with a handmade sign cautioning: BE AWARE OF UNDERCOVER AGITATORS AND COINTELPRO-LIKE TACTICS."<sup>13</sup>

Revealing the extent to which it would thwart lo-

cal community group efforts, in 2005 the city took the unusual step of initiating litigation against Time's Up, seeking to stop them from promoting their free rides and events unless they secured special event permits. The lawsuit asserted in part that without a permit, "it is unlawful to advertise the time and location of a meeting or group activity in a City park." Time's Up responded that the rides were spontaneous activities of many individuals and were not sponsored by any organization.<sup>14</sup>

The lawsuit threat loomed over the group, deterring many from attending events. A year after the suit was filed, a judge dismissed the city's request, writing that the rides did not fall under the city's examples of parades or programs necessitating permits and that "riding a bicycle on city streets is lawful conduct, as long as one observes the applicable traffic laws and rules."<sup>15</sup>

### **Monitoring a Moving Target**

Time's Up founder and director Bill DiPaola noted that soon after the 2004 Republican National Convention, many community-based, volunteer-run groups splintered apart or disappeared altogether. He attributed their dissolution to members' awareness that they were under surveillance by authorities. "Critical Mass brought police spying out in the open. The NYPD decided that bicyclists needed to be stopped, but they had to adapt their spying tactics to a fast-moving target. That's when their spying techniques were exposed: police stood on street corners with cameras, rode SUVs with darkened win-

dows, and used undercover agitators on bicycles. They even flew helicopters with infrared cameras that spied on people at night.”<sup>16</sup>

With an eye to preserving this chapter of surveillance history, Time’s Up members regularly photographed and videotaped the new roving surveillance, amassing hundreds of tapes of police encounters, including many that showed officers in vans monitoring and recording riders.

For years, New Yorkers involved with the rides could only guess the extent of surveillance. Their suspicions of NYPD spying, including deploying undercover officers to manipulate the outcome of bicycle rides, were ultimately validated. In 2012, the Associated Press obtained documents detailing that the police department’s Intelligence Division attended and spied on Time’s Up rides and events as late as 2008. The division also monitored the group’s websites, added agents to email lists, and maintained intelligence files on its members.<sup>17</sup>

### **Police Perjury and Assaults of Cyclists**

When government targeting of bicyclists was at its peak, on several occasions high-ranking plainclothes officers singled out riders, chasing and assaulting them. Bicyclists reported being pepper-sprayed and assaulted by uniformed and undercover police officers. Such actions were routinely covered up. One officer committed perjury by saying he had witnessed a traffic infraction when he had not, later claiming that his lieutenant had ordered him to testify falsely.

Brigitt Keller, executive director of the National Police Accountability Project, notes, “Attacks of bicyclists are an example of over-policing: The goal is not ensuring public safety, as officers are sworn to do, but silencing dissent and preserving the status quo. Time and time again we see police departments working at the behest of corporate interests with an ever expanding arsenal of new weaponry, unfettered surveillance, and bogus criminal charges that are later dropped in court.”<sup>18</sup>

And that’s just how events played out in New York. Videotape evidence exposed police assaults on bicyclists and police perjury, and to a certain extent undermined department credibility. I-Witness Video, a group that documented police interactions with protesters, discovered instances of police perjury and doctoring of video evidence by the District Attorney’s office. Of 1,806 arrests at the RNC, the *New York Times* reported, an estimated four hundred were negated solely on the basis of video evidence that exonerated arrestees and exposed perjury by law enforcement agents.<sup>19</sup>

After city officials denied assembly permits to cyclists for the February 2006 Critical Mass ride, the commander of Patrol Borough Manhattan South, Assistant Chief Bruce Smolka, operating in plainclothes, grabbed a rider off her bicycle by the chain she wore around her waist and pushed her to the ground.<sup>20</sup> Hundreds witnessed the incident, and the photograph became emblematic of “over-policing” of riders. Smolka physically assaulted females on at least two other occasions. A (non-bicycle-related)

federal lawsuit settled in 2007 for \$150,000 alleged that the borough commander kicked Cynthia Greenberg in the head as he tried to arrest her in 2003.<sup>21</sup> At the April 2005 Critical Mass, Smolka manhandled a woman walking with her bicycle, then was joined by other officers in pushing her into a police van.<sup>22</sup>

When Assistant Chief Smolka retired suddenly in 2007, hundreds of activists celebrated by proceeding to the Thirteenth Police Precinct with a marching band. Not surprisingly, a cadre of armed officers on scooters escorted them, and police ticketed some cyclists upon their departure.<sup>23</sup>

New York City taxpayers footed the bill for the host of wrongful arrests and injuries inflicted by the NYPD on Critical Mass riders. In 2010 the City settled a 2008 lawsuit for \$965,000, representing the claims of eighty-three riders from September 2004 to January 2006. Awards ranged from \$500 to \$35,000 per person.<sup>24</sup>

### **The Legacy of Critical Mass**

Chris Carlsson described Critical Mass's value for building community in the face of corporate domination: "Critical Mass has been surprisingly transformative in New York and everywhere it has appeared. It acts as an early antibody against the degraded environment of a choking city, while simultaneously re-animating a public sphere, a life outside of the regimentation of the state of emergency maintained as the new normal by the state and (even more militarized) police."<sup>25</sup>

It was precisely this outspoken assertion of public sensibility—a burst of energy that filled New York’s streets and attracted thousands of others to join in—that the NYPD deemed a threat warranting years of targeted surveillance and disruption. Mass displays of resistance, especially positive ones with potential to gain momentum, pose a singular challenge to what Carlsson aptly identifies as a city literally constricted by automobiles.

Corporations claim credit for improvements such as a bicycle-sharing program in New York City, giving additional insight into the nature of government and corporate surveillance and control of citizens’ movements. Other gains have been realized, but rarely are Critical Mass or Time’s Up acknowledged for their efforts.

Bill DiPaola noted that “New York City’s Critical Mass was by far one of the most successful campaigns in increasing the level of urban bicycling for commuting and recreation and also in pressuring the City to create a sustainable and safe infrastructure for pedestrians and bicyclists alike.”<sup>26</sup> New York City added over 250 miles of bicycle lanes to its streets in 2006. Three years later Mayor Bloomberg announced the transformation of traffic lanes on Broadway in Times Square—known as the Crossroads of the World—into pedestrian plazas. Remapping the area to bar automobile traffic and to ease traffic congestion in midtown Manhattan was made permanent in 2011. And the very same spot where thousands of bicyclists converged during monthly rides and raised their bikes over their heads is now an automobile-free zone.

These improvements illustrate the ways community advocates such as Critical Mass bicycle riders can be a valuable force for positive change. The riders should be appreciated as such instead of being deemed criminal threats and subjected to surveillance and disruption.

In addition to downplaying the role that community-level advocacy plays in improving a city's transportation system, government surveillance in New York left another enduring legacy. It exposed police spying, the excessive amount of money spent on it, and the violence and impunity with which authorities might attack cycling enthusiasts and others if they are perceived as a threat to the status quo. What begins as surveillance quickly takes on the form of counterterrorism operations that include physical intimidation, infiltration, mass arrests, assault, and spurious associations with criminal violence. That's what happened with the community groups and social networks that spurned the corporate way of life.

# City Lights