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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ALLIANCE FOR GLOBAL JUSTICE :
Plaintiffs, :
v. :
DISTRICT OF COLUMBIA, et al :
Defendants. :

-----x

DEPOSITION OF GARY FITZGERALD

Washington, DC

Wednesday, December 8, 2004

REPORTED BY:

JANE W. BEACH

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1 A You cannot cross this line.

2 Q And that directive could have been
3 conveyed merely by the physical line itself?

4 A Yes.

5 Q Do you recall hearing that directive being
6 conveyed verbally by any of your officers to
7 protesters?

8 A I don't recall specifically, no.

9 Q What were the protesters doing during that
10 period of time that they were surrounded there?

11 A I recall them being stationary, milling
12 about. Some of them were sitting down. Beyond that,
13 I don't recall any specific actions.

14 Q Do you recall them chanting anything?

15 A I don't recall.

16 Q Do you recall if any of the protesters
17 asked to be allowed to leave the area?

18 A I don't recall specifically that, no.

19 Q Do you recall if there were any chants by
20 protesters to allow them to disperse?

21 A I don't recall any specific chants.

22 Q Did you or the officers under your command

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1 THE WITNESS: My perception was that a
2 warning had been given at the time, as I recall.

3 BY MR. MESSINEO:

4 Q Is it your testimony that you believe
5 that the warning given after being surrounded without
6 any opportunity to disperse is sufficient warning, as
7 you understand what a warning is supposed to do?

8 A Well, as I said, I don't know what
9 activity was being done on the south side. I didn't
10 know if those members were being allowed to leave and
11 didn't. I didn't know. So in that case they were
12 given a warning and didn't leave.

13 Q So you believe --

14 A I can't speak to what tactical things were
15 going on, on the south side.

16 Q Did you believe, as you participated in
17 these arrests and ordered your men and women to
18 participate in these arrests, did you believe that
19 persons had been given an opportunity to disperse?

20 A In the confines of that area?

21 Q Yes.

22 A I believed a warning had been given and no

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1 one left.

2 Q I will repeat the question.

3 A Okay.

4 Q The question isn't specifically about
5 warnings. The question is, did you believe as you
6 participated in this arrest and ordered your
7 subordinates to participate in this arrest that those
8 protestors had been given an opportunity to disperse?

9 MS. PARRIS: Objection, counsel. He
10 answered the question.

11 MR. MESSINEO: He did not.

12 MS. PARRIS: Counsel, please let me
13 finish. He's answered the question as to what his
14 belief was.

15 MR. MESSINEO: No speaking objections,
16 please, counselor.

17 MS. PARRIS: Counsel, let me make my
18 record. He's answered the question. You are
19 argumentative, you are trying --

20 MR. MESSINEO: No speaking objections,
21 please, counselor.

22 MS. PARRIS: You are trying to interpret

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1 his question. Let him answer the question and if
2 he's answered it we will object as to asked and
3 answered again. You may answer the question.

4 THE WITNESS: So what's the question? I'm
5 sorry, I got lost in all of that.

6 MR. MESSINEO: Can you read back the
7 question.

8 (The Court Reporter read back the question
9 as requested.)

10 THE WITNESS: I believe that they did. It
11 was my perception that they had been given a warning.

12 BY MR. MESSINEO:

13 Q Were they given an opportunity to
14 disperse?

15 A Not at my end. Not at my -- not at the
16 end of the containment that was under my control.

17 Q And did you observe anyone availing
18 themselves of any opportunity to disperse on the
19 southern end?

20 A No, I did not.

21 Q Did you --

22 A You're talking about the demonstrators?

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1 Q That's --

2 A Did I observe any demonstrators availing
3 themselves of an opportunity to leave? No.

4 Q Did you observe any visible avenue of exit
5 being made available on the southern side?

6 A I did not. But I did not look for one.

7 Q Was it important to you in participating
8 in this arrest to ensure to your personal
9 satisfaction that this arrest was lawful and
10 constitutional?

11 A As part of a team that tries to accomplish
12 those missions, yes. I'm a cog in a wheel that's
13 trying to accomplish a task. I fulfilled my task. I
14 have to leave it to command officials above me who
15 were on the scene to make those determinations beyond
16 what I've been asked to do.

17 Q Don't you have an obligation to ensure
18 that what you do in fact is lawful?

19 A The placement of myself and my troops, I
20 believe, on the north at 20th and K was lawful for me
21 to do.

22 Q And your concern is strictly and solely

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1 with the placement of your skirmish line end and not
2 with your participation the arrest of these
3 individuals?

4 A Again, as a cog in the wheel, I can't
5 concern myself with every troop that's in the area
6 when 2,000 or so demonstrators are there and what
7 orders, who I thought was on the scene, Chief Gaynor
8 was given to the demonstrators. I didn't avail
9 myself of every conversation. As we talked about
10 earlier, I don't know of any negotiations that were
11 going on. I don't know what was going on north of me
12 or south of me rather.

13 Q You were there for a period of hours from
14 the time that your skirmish line and the southern
15 skirmish line went up and the time people had
16 handcuffs placed on them; is that right, sir?

17 A To my recollection.

18 Q And during that period of hours, not once
19 did you inquire of anyone whether this crowd had been
20 given an opportunity to disperse?

21 A I don't recall asking that.

22 Q Do you think those arrests were lawful?

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1 A To my knowledge the arrests were made for
2 parading without a permit. I have no doubt in my
3 mind that the group was parading without a permit.
4 But I didn't -- I wasn't involved in the processing
5 of the individuals, so I don't know what specifically
6 charges were placed against them.

7 Q But at the time of the arrests, it your
8 testimony that you knew what was contained in the
9 MPD's manual of management of mass demonstration
10 activity; is that right?

11 A Correct.

12 Q And you knew it so well that you were able
13 to articulate it with some specificity in the course
14 of our conversation here today; right?

15 A Yes, sir.

16 Q And presented with the same situation
17 again, you would do the same thing again?

18 A No, sir.

19 Q What would you do differently?

20 A I would become more involved in the
21 decisionmaking process. I mean, at that point I was
22 given directives by a command official to do