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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ALLIANCE FOR GLOBAL JUSTICE, :
et al., :

Plaintiffs, : Civil Action Number

vs. : 01 CV 00811 (PLF) (JMF)

THE DISTRICT OF COLUMBIA, :

et al., :

Defendants. :

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DEPOSITION OF TERRANCE W. GAINER

Washington, DC

Thursday, April 14, 2005

REPORTED BY:

JULIE BAKER, RPR CRR

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

1 Q Yes.

2 A No.

3 Q What was the role of Commander Radzilowski
4 that day with respect to this?

5 A I believe Commander Radzilowski was back
6 at the command bus outside the -- was parked between
7 the IMF and the World Bank.

8 Q Did he come to the scene of this mass
9 arrest?

10 A I don't recall that he did.

11 Q When you arrived and you communicated with
12 Acosta, I believe you said that the persons that
13 were contained within the police lines were at that
14 time not free to leave; is that correct?

15 A Yes.

16 Q From that time until the time persons
17 began to have handcuffs placed on them and began to
18 be placed on buses, how much time elapsed? From the
19 time of your arrival until the time you initially
20 observed persons having handcuffs placed on them,
21 how much time elapses?

22 A I'd estimate an hourish, but I'm not

1 certain.

2 Q Did Commander Acosta relate to you along
3 the way the marchers had been violent?

4 A I don't recall that he said that.

5 Q Do you have any reason to believe that the
6 marchers were violent along the way?

7 A I have no reason to believe that.

8 Q Did Commander Acosta convey to you there
9 was any property destruction associated with the
10 march?

11 A I don't recall that he said.

12 Q Do you have any reason to believe that
13 there was any property destruction associated with
14 this march?

15 A I have no reason to believe that.

16 Q When you observed the persons that were
17 contained upon your arrival, what were they doing?

18 A For the most part, they were either
19 standing or shifting on their feet or milling about.
20 I didn't pay attention to them. I focused on
21 Acosta.

22 Q Did you observe violence?

1 inconsistent with the police conditions or
2 expectations?

3 A I don't know if the whole group knew that.

4 Q Did you hear any warnings given to --
5 strike that.

6 You arrived after everyone was arrested or
7 everyone was contained?

8 A Yes.

9 Q Did Commander Acosta describe any warnings
10 that had been given to the group as a whole?

11 A I don't recall that he said that, no.

12 Q At that time, based on the information you
13 possessed, did you believe that any warnings had
14 been given to the group as a whole?

15 A I didn't think about that when we were
16 discussing it, the fact that they were marching
17 illegally without a permit.

18 Q Did you hear Chief Ramsey engage in any
19 communications that related to whether or not
20 warnings were given to the group as a whole?

21 A I don't recall any of those conversations.

22 Q Is it your understanding, then, it was

1 consistent with MPD policy at that time to be able
2 to mass arrest the group as a whole in the absence
3 of giving the group as a whole warnings?

4 A Are you asking was it the policy?

5 Q Yes.

6 A I believe for that offense there was not a
7 need to give a warning to the group as a whole.

8 Q In terms of MPD policy at the time, and
9 this may be the same question, there was no need to
10 give the group as a whole notice that they were
11 violating the law and an opportunity to come into
12 compliance with the law or disperse?

13 A No. I believe it was not a policy to do
14 that, and the practice was to work with the
15 organizers. That's that we've done in nearly every
16 single event, to work with the organizers.

17 Q There was no policy that mandated notice
18 or warning of violation and opportunity to comply or
19 disperse?

20 A I don't believe there was a written
21 policy, but there was a practice to communicate with
22 the leaders of the march.

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1 Q To make sure there's no miscommunication,
2 when we talk about the leaders of a march, in terms
3 of quantity, while it may vary, we're talking about
4 some handful of self-identified leaders or
5 organizers; is that correct?

6 A Yes, sir.

7 Q What was Jeffrey Harold's role in the
8 house arrests, if any?

9 A In general?

10 Q Yes.

11 A Jeff Harold was assigned to the special
12 operations division and at that time did a lot of
13 training on crowd control, mass arrest procedures.
14 I think he was a lieutenant at the time.

15 Q To your knowledge, was he on the scene of
16 these arrests?

17 A I don't recall if Jeff was there or not,
18 but if he was working, I'd be surprised if he
19 wasn't.

20 Q If he was working, you'd be surprised if
21 he was not on the scene of these mass arrests
22 because that is what he does?

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1 A Correct.

2 Q With respect to Commander Radzilowski,
3 would you expect him to be on the scene of mass
4 arrests such as this?

5 A Commander Radzilowski, it wouldn't have
6 been unusual for him to be at the scenes of marches
7 or protests, but I think then was in the command
8 bus, but I am reaching.

9 Q During the approximately one hour of time
10 from the point of your arrival to the point at which
11 handcuffs were placed on people's hands, were there
12 any other discussions with command staff that you
13 were a party to besides what you may have testified
14 to today?

15 A Yes.

16 Q What were those?

17 A The need for buses to transport the
18 arrestees and the placement of the buses. There was
19 concern about traffic flow, the safety of the people
20 getting on the buses, and were there other marchers
21 or protesters that we had to be concerned about that
22 day.

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1 Q With respect to the one hour of time that
2 I was referring to between the time of your arrival
3 and the time that handcuffs start going on people's
4 wrists, did you have any communication with
5 protesters?

6 A I vaguely recall. Protesters might call
7 me over and talk, but I don't have specific
8 recollection of a conversation.

9 Q Did you have any communication with
10 protest organizers?

11 A I don't recall.

12 Q During that period of time, did any
13 persons, to your knowledge, ask to be allowed to
14 leave?

15 A Forgive me. Would you say it again.

16 Q During that period of time, that one hour
17 we're referring to, did any of the persons, the
18 civilians, the protesters, did any of them ask to be
19 allowed to leave?

20 A I think this was the group where either a
21 reporter or a photographer for The Washington Post
22 was in the group and asked to be released, and I

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1 believe we accommodated that. At the risk of what
2 my attorneys tell me, I think this was the protest,
3 but boy, there's been a lot of them.

4 Q Other than that circumstance, were there
5 other requests to be allowed free to leave?

6 A I don't recall others.

7 Q Was it your sense that this group wanted
8 to be arrested?

9 A Not in the sense that the group later the
10 next day wanted to be arrested. I would distinguish
11 those two.

12 Q And you're referring to possibly in two
13 days the large scale mass arrests that were
14 orchestrated or coordinated between you, Chief
15 Ramsey and a large group of protesters whereby they
16 crossed a symbolic line in the direction of the IMF?

17 A Yes.

18 Q And that was completely voluntary in the
19 sense everyone knew what they were doing, and the
20 consequence would be arrest and for whatever
21 personal preference, these hundreds of individuals
22 desired to be arrested?

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1 Q If you were the decisionmaker in this
2 situation, would you have done things the way
3 Commander Acosta did?

4 A I believe I would have. Jose is good and
5 a very accommodating individual, and he gives a lot
6 of latitude.

7 Q While you're on the scene, based on what
8 you saw there, did Chief Ramsey approve also of the
9 way Commander Acosta was conducting these arrests?

10 A I don't know that he gave a verbal
11 approval or okay. The two of us were there and
12 asked questions and got the buses there and didn't
13 protest our presence, and we acquiesced and affirmed
14 it.

15 Q Were you also involved in terms of
16 arrangements for the buses and the logistics with
17 respect to that in terms of not obstructing that
18 process and facilitating it?

19 A Well, I certainly didn't obstruct it, and
20 I did make inquiries about where the buses were and
21 how quick they could get there and where they were
22 going to park because I recall being concerned about

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1 A Absent reading this, I don't recall it.

2 Q Were you asked about bystanders who were
3 swept up in the arrest?

4 A I don't recall that I was.

5 Q Aside from the one circumstance you
6 described earlier, were you asked about members of
7 the media who were swept up in the arrests?

8 A Again, I don't recall.

9 Q Would it be the practice of the MPD in
10 such circumstances to allow credentialed media who
11 had been caught up in the arrests, that is to say
12 were contained by the police lines, to exit from
13 that circumstance, to leave?

14 A It was the practice to try to do that.

15 Q How would that be effected or allowed?

16 A The credentialed media would make
17 themselves known, and the on-scene commander would
18 make a decision.

19 Q Why would they be allowed to leave the
20 group that had been arrested?

21 A Out of respect and deference to them
22 trying to report what was going on and the belief

1 that they weren't there to break the law but to
2 report on what was going on, deference to their
3 First Amendment, freedom of the press.

4 Q You would agree the right to free
5 expression is protected by the First Amendment;
6 correct, sir?

7 A Yes.

8 Q There was no practice of letting the
9 demonstrators leave the arrest zone; correct, on
10 April 15th?

11 A I don't recall that any protesters were.
12 Again, I don't know what Acosta did before I got
13 there.

14 Q With respect to the paragraph that is two
15 or three below that, it's a quotation from you.
16 It's also a short paragraph. It says "'I saw a
17 plastic liter-type bottle, with the label removed,
18 stuffed with a rag and a wick,' Gainer said. 'There
19 was no accelerant in the bottle. But to me, that's
20 a Molotov cocktail ready to go.'" Is that an
21 accurate quotation?

22 A I don't recall those words specifically.

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1 Q If you turn to what is marked as MPD
2 00025, and you see that section is talking about
3 issuance of warnings.

4 A Uh-huh.

5 Q Is it your understanding that marches are
6 or are not subject to these provisions, including
7 those on MPD 00025?

8 MR. KOGER: Compound question.

9 THE WITNESS: Could I have your question
10 read back.

11 BY MR. MESSINEO:

12 Q Let me restate it. Looking at page 00025,
13 does the section on "issuance of warnings" apply to
14 marches?

15 MR. KOGER: Vague and ambiguous in that it
16 presents a -- it calls for an application of the
17 regulation without a factual predicate.

18 THE WITNESS: I don't believe that warning
19 was required for marching, parading without a
20 permit. I don't think our stopping the unlawful
21 parade turned it into some type of crowd dispersal
22 issue.

1 BY MR. MESSINEO:

2 Q With respect to mass arrests, do you
3 believe that it was MPD policy to require that in
4 the context of arresting that march or that large
5 portion of the march for there to have been the
6 issuance of warnings before the arrests were
7 effected?

8 MR. KOGER: Vague and ambiguous as to the
9 nature of warnings.

10 THE WITNESS: Do you mean by issue of
11 warnings that we had to say leave or you're going to
12 be arrested?

13 BY MR. MESSINEO:

14 Q I think that's in many ways the gist of
15 what I'm saying.

16 A I do not believe that is the case for an
17 arrest for parading without a permit.

18 Q What is the basis for that belief?

19 A My recollection of the law.

20 Q And from what source is the law that
21 you're recollecting?

22 MR. KOGER: To the extent that your

1 question implicates communication between counsel
2 and Chief Gainer, I would invoke the attorney-client
3 privilege and advise the chief not to answer.

4 THE WITNESS: On advice of counsel, I
5 won't answer.

6 BY MR. MESSINEO:

7 Q With respect to the time period of April
8 2000, did you hold the belief that warnings of that
9 nature were -- strike that.

10 Did you hold the belief that warnings of
11 that nature in April 2000 were necessary before
12 engaging in the mass arrest of the marchers?

13 MR. KOGER: As to the specific April 15
14 march?

15 MR. MESSINEO: Yes, at that time.

16 THE WITNESS: As to the arrest on April 15
17 for parading without a permit, I did not believe
18 warnings were not necessary.

19 BY MR. MESSINEO:

20 Q What is the basis for the belief that you
21 held at that time?

22 A My understanding of D.C. law and the

1 cases.

2 Q To what law and cases are you referring?

3 A I don't have a recollection on what the
4 code number was.

5 Q Where did you learn the law and cases to
6 which you're referring?

7 MR. KOGER: Again, excluding conversations
8 with counsel with the District of Columbia.

9 MR. MESSINEO: To be clear, I'm also
10 talking about at the time of April 2000.

11 MR. KOGER: I understand that.

12 MR. MESSINEO: I wanted the deponent to be
13 clear.

14 THE WITNESS: The question is where did I
15 learn it?

16 BY MR. MESSINEO:

17 Q Yes.

18 A I can't specifically recall. It was part
19 of the maturation of the marching process?

20 Q Was it part of a formal training, civil
21 disturbance training or curriculum?

22 A I attended civil disturbance, but I don't