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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DISTRICT OF COLUMBIA

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ALLIANCE FOR GLOBAL :
JUSTICE, et al., : Civil Action Number
Plaintiffs, : 01-CV-00811
vs. : (PLF) (JMF)
DISTRICT OF COLUMBIA, :
et al.,
Defendants.

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DEPOSITION OF PATRICK BURKE

Washington, DC

Wednesday, July 25, 2007

REPORTED BY:

JULIE T. RICHER, RPR

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1 faith and that he would never have participated
2 knowingly in a mass false arrest? That's the
3 presumption, correct?

4 A I'm a little confused by that, but once
5 again, I don't believe that Chief Ramsey would order
6 any arrests or participate in arrests that had been
7 ordered if he did not believe those to be valid
8 arrests.

9 Q Is Chief Ramsey capable of having engaged
10 in a or participated in a mass false arrest?

11 A Is Chief Ramsey capable?

12 Q Yeah. Is that even a possibility?

13 MR. KOGER: Beyond the scope.

14 BY MR. MESSINEO:

15 Q Go ahead.

16 A I believe Chief Ramsey or anybody could be
17 implicated in that type of a situation, could
18 make -- could be involved in that.

19 Q There was after -- strike that. There was
20 an internal Metropolitan Police Department report
21 that was created through the Office of Professional
22 Responsibility relating to the September 2002

1 arrests. Are you familiar with that?

2 A I am.

3 Q On -- does your administration agree with
4 the finding on page 76 in bold, and I'll give you a
5 chance to look at it.

6 A The top bold or bottom bold?

7 Q It's on page 76 beneath the fold --
8 beneath the middle of the page where it says, "At
9 the direction of Chief Ramsey and in violation of
10 MPD general orders, changes were made to the
11 investigative report after it was completed by the
12 Office of Professional Responsibility. The changes
13 served to weaken criticism of the Department and the
14 nature of the arrests."

15 A The administration disagrees with that
16 finding. We believe that, as part of the
17 deliberative process and as part of the chief's
18 duties in a supervisory role in this case, that if
19 there are things that need to be clarified per
20 departmental directives, that he can ask for
21 additional investigation on any report.

22 Q But, sir, in this case he did not ask for

1 additional investigation, did he?

2 MR. KOGER: Argumentative.

3 THE WITNESS: So you're basically saying
4 the chief said to write it like this or the chief --

5 BY MR. MESSINEO:

6 Q Yes. I will ask it in two parts.

7 A Sure.

8 Q The chief did not simply give direction
9 that there be further investigation. That's not
10 what he did, correct?

11 A What I believe the chief did is probably
12 pick out -- normally you would specify -- any
13 supervisory official -- what specific part of an
14 investigation that you either concur or don't concur
15 with and would direct that those specific portions
16 of the investigation be further investigated.

17 Q And when a reviewing supervisory official
18 does identify sections with which he or she concurs
19 or does not concur, isn't a requirement of the MPD
20 general orders that he or she so note, as opposed to
21 just erasing and changing the report himself?

22 A Correct. Our general orders dictate that

1 we do not change reports. We concur or do not
2 concur with findings and ask for additional
3 investigation.

4 Q And the evidence of that concurrence or
5 lack of concurrence is typically with either a
6 handwritten notation or some other notation to which
7 one's signature is affixed stating the reasons for
8 nonconcurrence; isn't that correct?

9 A Typically or it can be oral. It depends
10 on the nature of the situation. And let's get --
11 just for clarification as well, if after sending a
12 report back for further investigation, I continue
13 to -- you've done everything I've asked you to do,
14 interviewed additional people, and I continue not to
15 concur with your decision, then I would simply write
16 over a cover sheet basically saying that I do not
17 concur for those reasons, so that is a possibility
18 as well.

19 Q Did Chief Ramsey ask -- in his review, did
20 he ask for additional investigation?

21 A I believe so.

22 Q What is the basis for that belief?

1 A I saw that there was a -- at least one
2 other report with -- with changes that were made, I
3 believe by Captain Klein.

4 Q I think that we should be more specific
5 about what report we are talking about.

6 A Certainly.

7 Q That is, which draft of the report.

8 A Sure.

9 Q If you don't mind holding on just one
10 moment, let me ask you this. Do you agree that
11 draft versions of that report were identified as
12 updates? The title was "Updates Relative to
13 Complaints of Alleged Misconduct" and that the final
14 version from OPR was entitled, "Final Report
15 Relative to Complaints of Misconduct"?

16 A That's normally how the process works,
17 that there are, you know, maybe a number of
18 preliminary reports and then a final investigative
19 report that stands at the end.

20 Q Referring to the one that's identified as
21 the final report, with respect to that version, did
22 Chief Ramsey direct additional investigation be

1 undertaken, once he received what was identified as
2 the final report?

3 A On the final report?

4 Q Yes.

5 A I can't say for sure.

6 Q Is there any evidence of which you're
7 aware of an investigation that occurred after the
8 completion of the final report?

9 A Is there investigation that happened
10 beyond the final report?

11 Q Yes.

12 A The only thing I can think of, and I'm not
13 sure which situation I'm getting into. I believe
14 after the Patterson report that there were
15 additional matters that she asked to be
16 investigated, and I believe something else came up
17 beyond that.

18 Q The committee found that the report that
19 was delivered to it was a report -- and this is on
20 page 76 -- that if you look on page 76 --

21 A Uh-huh.

22 Q This is the same paragraph I brought you

1 to before where it says, "At the direction of Chief
2 Ramsey and in violation of MPD general orders,
3 changes were made to the investigative report after
4 it was completed by the Office of Professional
5 Responsibility." Does the Fenty administration
6 concur that after the completion of the final report
7 by the OPR that, at the direction of Chief Ramsey,
8 changes were made to the investigative report?

9 MR. KOGER: Ambiguous as to "final."

10 BY MR. MESSINEO:

11 Q How many final reports were there, sir?

12 A Just one that I'm aware of.

13 Q And that final report is the one that is
14 identified as the final report from the Office of
15 Professional Responsibility?

16 A I believe so.

17 Q And you understood it to be final because
18 it's so denominated as final, correct?

19 A Correct.

20 Q After that report was received by -- after
21 that final report was received by Chief Ramsey, it
22 is the finding of the committee that changes were

1 made to that final investigative report at the
2 direction of Chief Ramsey. Do you concur that
3 changes were, in fact, made after the receipt of the
4 final report by Chief Ramsey?

5 A And to that I would say --

6 I'm sorry, Tom.

7 MR. KOGER: I was just going to repeat my
8 objection.

9 THE WITNESS: I believe yes, but the
10 question is, once again, did Chief Ramsey ask for
11 additional investigation or did not agree? Because
12 once again, that's his opportunity as the chief to
13 do so, or did he say specifically, "I want this,
14 this, this, and that changed," which would be a
15 violation of directives to do that. However, he
16 can -- it is his -- he does have the ability to say,
17 "I'd like this" -- you know, even if it is a final
18 report, unless the chief signs off on anything, it's
19 not final.

20 Q It would be a violation of departmental
21 directives for him to, rather than sending it back
22 down with a statement of nonconcurrence and a

1 request for further investigation, to go ahead and
2 simply direct changes be made to the report; is that
3 correct?

4 A Per general orders, that's correct.

5 Q Equally, it would be a violation of
6 departmental directives for Chief Ramsey to receive
7 a copy of the report in electronic computer format
8 and to direct someone within his office to make
9 changes to that report?

10 MR. KOGER: Compound.

11 BY MR. MESSINEO:

12 Q I'll make it more simple. It would also
13 be a violation of the departmental directives for
14 the chief to direct that someone take the final
15 version in electronic form and make changes to it?

16 A The chief direct someone to make? Yes,
17 whether it's electronic format or in written format,
18 the chief shouldn't. You know, no supervisor can
19 direct someone to make changes. Once again, it's
20 only they concur or do not concur and request
21 further investigation.

22 Q I'm going to ask you to take a look at --

1 time period is the existence of any policy. We know
2 that there was an enactment in the first amendment
3 in the Police Standards Act of 2004 that took
4 effect, I think, in June of 2005.

5 MR. KOGER: April 13, 2005 is my
6 calculation.

7 MR. MESSINEO: My question will continue
8 until March of 2005. That's going to be the scope
9 of my question.

10 MR. KOGER: Okay. I'm objecting but not
11 directing.

12 BY MR. MESSINEO:

13 Q From the period of January 2000 through
14 March 2005, did the MPD have a policy or practice
15 authorizing the arrest of persons for parading
16 without a permit?

17 A Yes, we did.

18 Q Was that policy written anywhere or
19 reflected anywhere in documentation?

20 A I believe it was in the mass demonstration
21 manual.

22 Q Specifically allowing for arrests for

1 believe it's in a manual. We will look through the
2 manuals.

3 A Sure.

4 Q Do you believe or is it your position that
5 the policy authorizing arrests for parading without
6 a permit is reflected in any other documentation
7 other than the mass demonstration manual or manuals?

8 A As far as MPD guidelines, I would say no.
9 I believe it's listed in, I think it's DCMR Title 24
10 and one of the other DCMRs, possibly 18.

11 Q Now, is the administration aware that
12 parading without a permit is identified as a civil
13 infraction pedestrian offense in those regulations?

14 A Are we aware?

15 Q Yes.

16 MR. KOGER: Compound, because you've got
17 two sets of regulations.

18 MR. MESSINEO: Just tell me what the two
19 sets are.

20 MR. KOGER: Okay, 18 is traffic, and 24 is
21 public space and safety.

22 BY MR. MESSINEO:

1 Q Where is -- are you aware that in the
2 regulations, the DCMR, that parading without a
3 permit is identified as a pedestrian traffic
4 offense?

5 A In title 18, I believe, correct.

6 Q And is the administration aware also that
7 it is categorized as a civil infraction in that
8 section?

9 A In Title 18?

10 Q Yes.

11 A Yes.

12 Q And is the administration also aware that
13 in the late 1970s, the council decriminalized
14 pedestrian traffic offenses?

15 A Yes. I'm aware of that now, after reading
16 these reports.

17 Q Was the executive branch aware of the
18 enactment or the passage of the act that
19 decriminalized pedestrian traffic offenses? Was the
20 administration, the executive branch, aware of that
21 at the time of April 15, 2000?

22 A I can't say. I'm not prepared to answer

1 that.

2 MR. KOGER: I think I've stipulated to it
3 elsewhere, and I will stipulate to that again. I
4 believe I stipulated to that in Jeff Herold's
5 deposition, and I will stipulate to that again.

6 MR. MESSINEO:

7 Q And how is it, then, that despite the
8 decriminalization of pedestrian traffic offenses
9 that the MPD maintained a policy authorizing arrests
10 for pedestrian traffic offenses, specifically being
11 parading without a permit?

12 MR. KOGER: Foundation.

13 BY MR. MESSINEO

14 Q You may answer.

15 A I can only speculate on that. I can only
16 assume that we didn't know it was not a criminal
17 charge.

18 Q Is it the position of the Fenty
19 administration that it was incorrect to arrest for
20 the pedestrian traffic offense of parading without a
21 permit after the act which decriminalized pedestrian
22 traffic offenses?

1 A Yes.

2 MR. KOGER: Foundation.

3 BY MR. MESSINEO:

4 Q Does the administration agree that it
5 lacks or that the MPD lacks the legal authority to
6 arrest for parading, for the civil infraction of
7 parading without a permit?

8 A Are we saying currently or prior to 2005?

9 Q Let me be specific in the time frame if
10 that is more helpful.

11 A Yes.

12 Q On April 15, 2000, did the MPD have the
13 lawful authority to arrest for parading without a
14 permit?

15 MR. KOGER: Legal conclusion.

16 BY MR. MESSINEO:

17 Q You may answer.

18 A I do not believe so.

19 Q On September 27, 2002, did the MPD have
20 the lawful authority to arrest for parading without
21 a permit?

22 A I do not believe so.

1 Q During the time period of January 2000
2 through March of 2005, did MPD policy authorize
3 arrests for parading without a permit where the MPD
4 had not first provided to the potential arrestees --
5 had not first provided a lawful order to disperse
6 and opportunity to comply?

7 A I believe the directives at that time
8 provided for two warnings unless circumstances
9 dictated otherwise where it wasn't feasible.

10 Q During the period of January 2000 to
11 March 2005, did the MPD have a policy or practice
12 that authorized arrest of an individual for parading
13 without a permit where that individual had walked
14 solely on the sidewalk?

15 A I do not believe that was a policy.

16 Q During the period of January 2000 to
17 March 2005, was there a policy requirement that in
18 the case or event of mass arrest -- was there a
19 policy requirement for the police to have probable
20 cause to arrest every single individual in the mass
21 arrest group?

22 A I believe so.

1 roadway without an advance written permit?

2 A Once again, we're talking about prior to
3 2005?

4 Q Yes. The time frame is January 2000 until
5 March 2005.

6 A In that time frame were we allowing to
7 march without a permit in the roadway? I'd have to
8 look back at the directives in reference to that. I
9 cannot recall if they restricted that or not.

10 Q And my question is not specifically
11 policy. It was just a practice. And the question
12 was: Was there a practice in place where, within
13 the exercise of officers' discretion, that is,
14 officers could decide yes or no, according to this
15 practice to allow protesters to parade in the
16 roadway even where they lacked an advance written
17 permit?

18 A I believe so in certain circumstances.

19 Q Now, in terms of MPD policy where that was
20 allowed, were police under policy authorized to then
21 arrest those persons for parading without a permit
22 where the police had not given a clearly audible

1 order to the crowd to disperse the parade?

2 MR. KOGER: "Where that was allowed" is
3 ambiguous to me but maybe not.

4 BY MR. MESSINEO:

5 Q Where -- let me ask it again. In the
6 situation where, in the exercise of discretion,
7 police allowed a demonstration to parade in the
8 roadway or to march in the roadway without an
9 advance written permit, in that situation, having
10 allowed that march in the street to occur or
11 allowing that march in the street to occur --

12 A Okay.

13 Q I'm asking about MPD policy under those
14 circumstances. Under those circumstances, under MPD
15 policy, are the police authorized to engage in
16 arrest of those demonstrators for parading without a
17 permit where police had not given a clearly audible
18 general order to the crowd to disperse the march or
19 the parade?

20 A No, I don't have any recollection of that
21 being in place.

22 Q In other words, you -- it was not

1 authorized under policy?

2 A Right.

3 Q Policy would require under those
4 circumstances a --

5 A Yeah. As far as my recollection of
6 policy, I don't remember any of that.

7 Q The council credited the expert testimony
8 of Robert Klotz, and do you know who Robert Klotz
9 is?

10 A I do not.

11 Q I believe he's a former commander of SOD
12 during the period of the 1970s. The council
13 credited expert testimony of Robert Klotz that
14 quote, "During a mass demonstration situation, if
15 the police overlook minor violations of the law for
16 a period of time, it is important to communicate a
17 fair amount of notice before the police change
18 tactics and begin to enforce the violations of law."
19 Does your administration concur with that statement?

20 A We do believe that to be an accurate
21 statement.

22 Q On page 59 of the Exhibit 1 council

1 report, if you can just read to yourself the section
2 that begins with the finding, "Chief Ramsey is
3 responsible for the arrests at Pershing Park" and
4 just the supporting unbolded text underneath that
5 finding.

6 A Okay.

7 Q The council in this section, referring
8 specifically to September 27th '02 --

9 A Uh-huh.

10 Q -- finds that once Chief Ramsey arrived on
11 the scene of the mass arrests or what will become
12 the mass arrests, that he was the official in
13 charge. Does your administration concur with that?

14 A At this time frame, yes, that Ramsey, as
15 the chief of police under that time frame, was the
16 official in charge of the department.

17 Q And with respect to the April 15th time
18 period, April 15, 2000, does the administration
19 concur that once Chief Ramsey arrived at the scene
20 of the then progressing detention of the
21 demonstrators, that he was the official in charge?

22 A I believe so.