

# Transcript of the Testimony of **Jeffrey Herrold**

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**Case:** Alliance For Global Justice v. The District Of Columbia

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1 A I couldn't say. Before noon.

2 Q How did it come to your attention?

3 A I don't recall.

4 Q Did you have any communications with fire  
5 department officials before noon on that day?

6 A No.

7 Q Once it came -- once the subject of the  
8 warehouse came to your attention, what did you do?

9 A I responded up to that location.

10 Q And prior to it coming to your attention,  
11 did you have any information or knowledge about that  
12 warehouse in particular?

13 A No.

14 Q That was the first time that the fact of  
15 the existence of that warehouse came to your  
16 attention?

17 A Correct.

18 Q And for what purpose did you go to the  
19 warehouse?

20 A Curiosity.

21 Q Were you on duty?

22 A Yes.

1 Q Did you go to the warehouse for any MPD-  
2 related duty or responsibility?

3 A Other than what it relates to how I would  
4 logistically support CDU, that was my purpose for  
5 going up there.

6 Q So your purpose for going up there was to  
7 ensure that there was adequate gear and supplies,  
8 such as flexcuffs and other items, that would be  
9 needed by officers at that physical location?

10 A Yes. And to prepare for any further  
11 action.

12 Q When you arrived -- and you did arrive at  
13 the warehouse at some point?

14 A Yes.

15 Q What did you observe when you first  
16 arrived at the warehouse?

17 A There was a police line at the corner  
18 holding back a large group.

19 Q Do you remember what the  
20 intersection was?

21 A It was Florida Avenue. I don't remember  
22 the cross street.

1 Q Where was the warehouse in relation to the  
2 police line?

3 A To the east.

4 Q Was that group being prevented by the  
5 police line from approaching towards the area of the  
6 warehouse?

7 A Yes.

8 Q Did you observe whether the police line  
9 was wearing what we would call riot gear at that  
10 time?

11 A You have to describe riot gear.

12 Q Were they wearing soft uniforms?

13 A Yes.

14 Q Were they wearing helmets?

15 A Yes.

16 Q With visors?

17 A Yes.

18 Q Were they wearing protective gear, that  
19 is, like shinguards, that's associated with civil  
20 disturbance duties?

21 A I don't believe they were.

22 Q When you transported yourself to the

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1 scene, did you go alone?

2 A No.

3 Q Who did you travel with?

4 A A member of the New York City Police  
5 Department.

6 Q Who was that?

7 A Tom Graham.

8 Q What's Tom Graham's position with the New  
9 York City Police Department?

10 A He's the commanding officer of their  
11 disorder control unit.

12 Q Why was he with you?

13 A As I do, he also goes to various cities to  
14 observe police best practice.

15 Q Was he basically shadowing your actions or  
16 moving about with you on that day?

17 A From time to time, he would.

18 Q When you arrived at the scene and observed  
19 the police line, did you observe who the officer in  
20 charge was?

21 A No.

22 Q What did you do when you arrived at the

1 scene and observed the police line?

2 A I moved beyond the police line towards the  
3 warehouse.

4 Q Had you traveled in a police cruiser?

5 A I walked through where the police line  
6 was.

7 Q And you walked past the police line. And  
8 behind the police line, in that area where the  
9 warehouse was, what did you observe?

10 A The street was empty. I remember walking  
11 back through an alley and then entering the  
12 warehouse.

13 Q Was there a law enforcement presence on  
14 the street, other than the perimeter?

15 A Yes.

16 Q What was that presence?

17 A It was, as I remember, a group of police  
18 officers that were present in the street, or in the  
19 area, not necessarily in the street.

20 Q Was the block that the warehouse was on  
21 closed off to vehicular traffic at that point?

22 A Yes.

1 which they cut through the park to the time that they  
2 were arrested, is it your sworn testimony that every  
3 single person that cut through that park was not on  
4 the sidewalk?

5 A You're going to have to repeat that one.

6 Q Can you say with certainty that every  
7 person that cut through the park did not from the  
8 park move northbound on the sidewalk?

9 A As I recall.

10 Q So it's your testimony that the sidewalks  
11 between 20th and Eye and 20th and K, until the arrest  
12 is effected, the sidewalks are absolutely clear of  
13 people?

14 MR. KOGER: Mischaracterizes the  
15 testimony.

16 You may answer.

17 THE WITNESS: That's not what I said. I  
18 don't know if the sidewalks were clear or not.

19 My recollection is, to complete answering  
20 that question, is that folks entered the park, exited  
21 the park back into the street, and the arrests were  
22 effected after that.

1 BY MR. MESSINEO:

2 Q Could you see that -- from your vantage  
3 point, could you see the crowd as it moved up  
4 northbound through 20th and Eye towards 20th and  
5 K?

6 A Yes.

7 Q And from your vantage point, is it your  
8 testimony that the sidewalks were clear of persons?

9 A As I recall.

10 Q It's your testimony that there was no  
11 civilian on the west sidewalk between 20th and Eye  
12 and 20th and K as they were moving north?

13 A I don't recall seeing anybody on the  
14 sidewalks.

15 Q Did you seek to ascertain whether there  
16 were any persons on the sidewalks?

17 A As I stated, I don't recall anyone on the  
18 sidewalks.

19 Q Did you seek to ascertain whether there  
20 were persons on the sidewalks as the group  
21 northbound?

22 A I moved no such inquiries.

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1 Q And did you make any efforts to  
2 affirmatively establish whether there were persons on  
3 the sidewalk or not?

4 A As I stated, I made no such inquiries.

5 Q And you took no actions to affirmatively  
6 establish that, either.

7 A Correct.

8 Q What happened after the group was arrested  
9 between the two police lines?

10 What was the first communication from MPD  
11 that you observed from the group, if any?

12 A The communication was made by me utilizing  
13 the sound system on a motorcycle, informing the group  
14 that they were under arrest.

15 Q Prior to being under arrest, as the group  
16 was marching, was the group violent?

17 A I know of no violent activities within the  
18 group.

19 Q Was there a breach of the peace involving  
20 a substantial risk of violence?

21 A Yes.

22 Q What is the basis for that view of yours?

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1 there was a substantial risk of violence?

2 A That is an additional factor.

3 Q When you say boisterous, what did you  
4 observe? What did you mean by boisterous? What  
5 activity are you referencing?

6 A The loud conduct -- screaming, yelling,  
7 using other unacceptable gestures. Not just the tone,  
8 but the manner and the statements that are being  
9 screamed by these folks.

10 Q Anything else?

11 A No.

12 Q Was the large size of the group a factor  
13 that led you to conclude that the group posed a  
14 substantial risk of violence?

15 A That was another factor.

16 Q And was their meandering movement a factor  
17 that led you to believe that they posed a substantial  
18 risk of violence?

19 A That's an additional factor.

20 Q What do you mean by meandering?

21 A Wandering aimlessly through the streets  
22 without regard to the laws and the other folks that

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1           A        I would categorize them as nonviolent.

2           Q        Were you involved in the decision to  
3 arrest?

4           A        Yes.

5           Q        In what way?

6           A        I was asked by the commander whether he  
7 felt that this group could be moved out of the street  
8 without arrest.

9                    And I stated that I didn't believe that  
10 was a possibility.

11           Q        And that is because you felt that the  
12 group was nonresponsive to your repeated  
13 communications?

14           A        That was one of the things that was taken  
15 into consideration.

16           Q        What were the other things taken into  
17 consideration?

18           A        Everything that I've already testified to.

19           Q        They're a loud, boisterous, large group  
20 meandering through the streets?

21           A        Yes.

22           Q        That they were screaming, yelling, making

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1 thereabouts?

2 A Correct.

3 Q After you communicated with the group by  
4 way of the amplified sound on the motorcycle, what  
5 was the demeanor of the arrestees?

6 MR. KOGER: Objection. Assumes one uniform  
7 demeanor.

8 You may answer.

9 THE WITNESS: There were people that  
10 yelled and screamed and conduct such as that.

11 BY MR. MESSINEO:

12 Q Who was the highest officer on the scene?

13 A At which point?

14 Q At this point where -- at any point during  
15 the arrest.

16 A I believe Chief Ramsey was there for a  
17 period of time.

18 Q And was Assistant Chief Gainer there?

19 A Yes.

20 Q Who else that would be considered command  
21 staff was there at any point during the time of the  
22 arrest?

1 A Commander Acosta.

2 Q Anyone else?

3 A I believe Commander Kooch. I can't recall  
4 any other command staff specifically.

5 Q When you were following the march before  
6 the arrest, and you were making requests through the  
7 car, how many people were in the march?

8 A Around 500 or less.

9 Q Did they encompass more than one block?

10 A They were primarily within the length of a  
11 block.

12 Q And they were loud and boisterous?

13 A Yes.

14 Q What makes you believe that persons in  
15 front of the loud and boisterous march, or within it,  
16 heard your requests?

17 A The requests were made over an  
18 amplification system many, many, many times over  
19 approximately a ten- or 15-minute timespan.

20 Q In that ten- or 15-minute timespan, did  
21 you make any efforts to deliver the request from the  
22 front of the march?

1           A        That would have been impossible for me to  
2 do.

3           Q        To your knowledge, did any MPD officer  
4 attempt to deliver that request from the front of the  
5 march?

6           A        I don't know if that was done or not.

7           Q        Did your police vehicle move around the  
8 crowd, or was it fixed in the rear of the crowd?

9           A        I was forced to stay at the rear of the  
10 crowd to prevent injuries to myself or others.

11          Q        Did you give a warning that consisted of  
12 an announcement citing the offenses or violations  
13 that were being committed by the participants and a  
14 request order that the crowd disperse?

15          A        I gave no dispersal order.

16          Q        And you gave no request to disperse,  
17 either?

18          A        I never asked anybody to disperse.

19          Q        Did you document the warning process by  
20 means of an audio or visual recording?

21          A        No.

22          Q        When you put up the line and you gave the

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1 Q Is parading without a permit a  
2 misdemeanor?

3 A No.

4 Q Is it a felony?

5 A No.

6 Q What level of severity under the law is  
7 it, to your knowledge?

8 A It's a civil infraction.

9 Q Is failure to --

10 MR. KOGER: I'm going to belatedly object  
11 to the extent that we have a layman expressing what  
12 is legal.

13 MR. MESSINEO: I was only asking that as a  
14 CDU commander, rather than as a lay person. Or CDU  
15 coordinator.

16 BY MR. MESSINEO:

17 Q The failure to obey. Is that a felony?

18 A No.

19 MR. KOGER: Same objection.

20 BY MR. MESSINEO:

21 Q Do you understand it to be a misdemeanor?

22 A No.

1 Q What do you understand the level of  
2 severity of failure to obey to be?

3 A To the extent that I know, it's a traffic  
4 violation.

5 Q Was there any request or order that was  
6 considered to be not heeded, other than the ones that  
7 you made from your vehicle at the rear of the march?

8 A I don't know.

9 Q Have you any reason to believe that there  
10 was a basis for consideration of failure to obey any  
11 other orders or directives besides the ones that you  
12 have testified regarding here today?

13 A I know that one of the factors that  
14 weighed into the charge were my orders to leave the  
15 street.

16 What else may have been taken into  
17 account, I don't know.

18 Q Were there any other orders other than  
19 your orders to leave the street that were discussed  
20 in this meeting with the command staff?

21 A Not that I recall.

22 Q Are you aware of any other orders other



1 than the orders that you gave that formed the basis  
2 of a failure-to-obey charge?

3 A No.

4 Q Did you record the number of orders you  
5 gave in any log or on any document?

6 A No.

7 Q Did you record the verbiage, the words you  
8 used, in any log or document?

9 A No.

10 Q Did you make documentation of exit routes  
11 available to the crowd?

12 A I never wrote anything down like that, no.

13 Q In this type of mass arrest situation, who  
14 was the arresting officer?

15 A The officer that put the handcuffs on the  
16 individual.

17 Q How is it determined who the arresting  
18 officer in fact will be?

19 A There are arrest squads assigned to the  
20 civil disturbance platoons. They're designated as  
21 arresting officers when an offense occurs.

22 Q How many of those arrest squads were

1           A       That's a fading glimpse. My specific  
2 recollections are of those that I saw in front of the  
3 police car and those that approached the police line.

4                    There was other interaction between police  
5 officers and demonstrators. However, I don't know  
6 what the conversation was between them.

7           Q       Did you observe anyone asking to be  
8 allowed to leave?

9           A       Yes.

10          Q       What was the response?

11          A       Certain people were allowed to leave.

12          Q       Who was allowed to leave?

13          A       Credentialed media.

14          Q       Anyone else?

15          A       No.

16          Q       Who made the determination that  
17 credentialed media that were within that group were  
18 allowed to leave?

19          A       Supervisors on the scene.

20          Q       Which ones?

21          A       Myself and others.

22          Q       So were the credentialed media in the

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1 procession on the streets?

2 A Yes, they were.

3 Q In the same procession that you say that  
4 there was no permit for?

5 A Correct.

6 Q Is there any reason -- why would you  
7 except them, credentialed media, from the arrest  
8 process?

9 A Because that's a news-gathering operation.  
10 There is certain leeway given to the media in order  
11 to allow for the gathering of  
12 the news.

13 Q Don't you give leeway to political  
14 gatherings?

15 A Absolutely.

16 Q You don't give any leeway to the folks  
17 that were trapped in there, to allow them to leave.

18 Correct?

19 MR. KOGER: Argumentative. You may answer.

20 THE WITNESS: Repeat the question, please.

21 MR. MESSINEO: I'll withdraw the question.

22 BY MR. MESSINEO:

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1 Q How many credentialed media were afforded  
2 the leeway to pass through the police lines?

3 A Less than ten.

4 Q Did you observe any passing through on the  
5 northern police line?

6 A That's where the media was extracted from.

7 Q Were you physically present at the  
8 northern police line when the extraction occurred?

9 A Yes.

10 Q Did any media leave through the southern  
11 police line?

12 A I don't know.

13 Q How was it advised to the crowd, if at  
14 all, that media would be allowed to leave?

15 A There was never that advisement.

16 Q How were your officers advised that the  
17 lines were to yield for credentialed media?

18 A The officers were not advised of that.

19 Q How did you coordinate the extraction of  
20 the credentialed media?

21 Did they all congregate together in one  
22 location at the northern line?

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1           A        You see a lot of media credentials go up  
2           in the air in such a situation. It's apparent where  
3           the media is and who wants to be extracted from the  
4           situation.

5           Q        Did you observe any persons other than  
6           media seeking to be extracted from the situation?

7           A        Yes.

8           Q        Who did you observe?

9           A        As I previously stated, I have specific  
10          recollection of those that were directly in front of  
11          my police car.

12                    And at one point, one of those people  
13          approached me and asked to be released.

14          Q        You didn't allow him or her to be  
15          released?

16          A        No, I didn't.

17          Q        At any point, did you observe the groups  
18          of the arrestees or the entire group of the arrestees  
19          chanting to the effect that they would like to  
20          disperse?

21          A        I have a vague recollection of something  
22          like that.

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1 Q Janitors For Justice was not advertising a  
2 commercial product, were they?

3 A No.

4 Q They were not a march of animals and other  
5 sites in order to advertise the coming of the circus.

6 A No.

7 Q The function of that march was to convey  
8 some sort of message.

9 A Yes.

10 Q Has it on other occasions occurred that  
11 the police have surrounded marchers who were marching  
12 for the purpose of conveying some sort of  
13 noncommercial, including political, message?

14 A Yes.

15 Q On what such occasions can you recall?

16 A At least three times with the group that I  
17 mentioned -- the Janitors For Justice.

18 There were several processions known as  
19 critical mass, bikeriders, which were cordoned and  
20 arrested. Or several of those members.

21 There was a group that's locally known as  
22 Reclaim The Streets, who were at one point cordoned

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