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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

THE DISTRICT OF COLUMBIA, :

et al., :

Defendants. :

-----x

DEPOSITION OF JEFFREY HEROLD

Washington, D.C.

Thursday, July 21, 2005

REPORTED BY:

VICTORIA L. WILSON

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1 leadership of the group, where a route and a portion
2 of the roadway would be agreed upon, sufficient
3 staffing would have to be available from the police
4 department to allow for the safe passage of the
5 march, and then the marchers would have to stay
6 within those parameters as agreed to with the
7 leadership of the group throughout the procession.

8 Q Would it be the practice of police to
9 provide an escort?

10 A If that escort was available.

11 Q And would it be the practice of the police
12 to accompany the march as it proceeded?

13 A Yes.

14 Q With respect to the offense of parading
15 without a permit, is that, as the District views it,
16 within the policy of the District that that is an
17 arrestable offense?

18 A Yes.

19 Q That is to say that the District's view at
20 April 2000 -- that's what we are referring to.

21 A Yes.

22 Q -- in April 2000, it was within the policy

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1 of the District to arrest individuals who were
2 believed to or, in fact, had paraded without a
3 permit?

4 A Yes.

5 Q Is the District aware that the council of
6 the District of Columbia decriminalized certain
7 traffic offenses?

8 MR. KOGER: This is -- this now calls for a
9 legal opinion, necessarily, which is beyond the scope
10 of the 30(b)(6).

11 MR. MESSINEO: No, it actually pertains in
12 this inquiry -- and I agree that one might interpret
13 it as that but that's not what the question actually
14 was phrased as. I'm asking about the District's
15 awareness and knowledge.

16 MR. KOGER: It is the "decriminalization"
17 that we have an issue with.

18 MR. MESSINEO: Let me -- let me proceed in
19 a different route and see if this obviates your
20 issue.

21 BY MR. MESSINEO:

22 Q Let me hand you this next exhibit.

1 2000. To establish probable cause to arrest an
2 individual for parading without a permit, would the
3 District have to know or believe that there was a law
4 enforcement officer who observed the conduct that
5 ostensibly constituted parading without a permit?

6 A Yes.

7 Q And would that individual be what is
8 referred to as an arresting officer -- or let me
9 restate it. What is an arresting officer?

10 A The arresting officer is the person who
11 actually takes custody of a person that's been
12 arrested.

13 Q Is that, necessarily, talking about April
14 2000 -- and let me be more specific -- be more
15 specific now. In the context of the April 15th, 2000
16 mass arrests in the vicinity of 20th and K, as a
17 general matter, were the arresting officers persons
18 who observed the conduct that is ostensibly parading
19 without a permit?

20 A No.

21 Q The arresting officers would, in that
22 specific instance, be -- have what relationship to

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1 the arrestee? What did they know about the arrestee?

2 A They would be provided information by
3 either the incident commander or others that observed
4 the illegal conduct and the -- they would then take
5 the person into custody on that information.

6 Q Where would it be recorded as to the
7 identity of what officer, in fact, observed the
8 illegal conduct?

9 A The information provided to the arresting
10 officer would be documented on the field arrest form.

11 Q Would the field arrest form in that
12 documentation identify the -- the name of the
13 individual officer who actually saw what ostensibly
14 was parading without a permit committed by the
15 individual arrestee?

16 A No.

17 Q Where would that information be deposited,
18 maintained, that is to say, the identity of the law
19 enforcement officer who observed a particular
20 arrestee engaged in the allegedly offensive conduct
21 of parading without a permit?

22 A In September of 2000.

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1 Q We will go through the mechanics moment by
2 moment of this whole series of events leading up to
3 the arrests but I understand that, based on your
4 knowledge, you may be able to answer some of these
5 things summarily. If you take a look at Exhibit
6 Number 29, do you recognize what that document is?

7 A I have never seen a document like this
8 before.

9 Q Okay. It purports to be a collateral
10 list. What is collateral?

11 A Money that's paid to the court to secure
12 release.

13 Q Is it -- and you see, of course, under
14 "Officer's Name," and I understand that not having
15 seen this format before, you do not necessarily know
16 what that column would represent, appears the name
17 Radzilowski repeatedly.

18 A Yes.

19 Q Do you have any reason to believe that
20 Commander Radzilowski was involved in the processing
21 of collateral in these April 15th mass arrests?

22 A I don't have that information, whether he

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1 was or was not.

2 MR. MESSINEO: You know, I'm sorry, we can
3 agree to keep this separate, if you would like.

4 MR. KOGER: Whatever is easier.

5 MR. MESSINEO: All right. Let's mark it as
6 30 and we will keep it with the exhibits.

7 (Herold Deposition Exhibit 30 identified.)

8 BY MR. MESSINEO:

9 Q Let me just represent some information to
10 you so you don't think that I'm trying to be -- it
11 was testified to by Ms. Gant that the records
12 division does not and never received any of the 759
13 field arrest forms. It is also testified in this
14 deposition by Ms. Gant that the records division
15 never received and has no idea where might be any of
16 the MPD 163s. So I understand that you may or may
17 not be able to answer these questions; however, as a
18 representative of the District, I'm asking them
19 because the information is relevant to plaintiffs'
20 claims. You -- I have handed you what is Exhibit B,
21 which has been produced in discovery in this case,
22 which is approximately, looks like, 204 like -- like

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1 MR. MESSINEO: Okay. We can take a break.

2 THE WITNESS: Okay. Good.

3 (Recess.)

4 BY MR. MESSINEO:

5 Q I want to ask two questions just to
6 establish what I think has been established. You do
7 not have testimony to provide today as to the
8 identity of any officers who may have observed
9 conduct constituting parading without a permit linked
10 to specific arrestees?

11 A Not linked to specific arrestees.

12 Q What -- what information do you have about
13 the identity of persons who have observed events
14 relating to parading without a permit that are more
15 generalized?

16 A Those would be personal observations.

17 Q Okay. And as we go through the chain of
18 events, we will go through that. Other than what you
19 have testified to just a moment ago, there isn't
20 other information that you possess regarding the
21 identity of persons who would be witnesses to the
22 specific arrestees, being able to say this person did

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1 that at this place at this time?

2 A No, I couldn't do that. I couldn't say
3 that.

4 Q So it would be futile and pointless at this
5 moment, for example, for us to go through all 200
6 pages of Exhibit B or to go through the CJIS
7 printouts or to go through the collateral list and
8 ask you name by name who saw this person doing
9 something unlawful?

10 A I would agree with you.

11 Q Okay. We won't do that, then. Returning
12 to your deposition, which is marked -- the transcript
13 is an exhibit from earlier. Here it is. It is
14 Exhibit Number 26.

15 THE WITNESS: Excuse me. Okay.

16 BY MR. MESSINEO:

17 Q You were provided a copy of this transcript
18 back around the time of the deposition or within a
19 few months thereafter?

20 A Yes.

21 Q And did you have the opportunity to make
22 any connections to it?

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1 the Department of Justice. Discussions surrounding
2 that incident indicated to me that there were orders
3 given to move from the street at the Department of
4 Justice.

5 Q You do not know who relayed that
6 information to you?

7 A I don't recall at this time.

8 Q You do not -- the District does not know of
9 the identity of persons within the District that
10 would be able to say that they were a witness to
11 this?

12 A I could not identify a witness.

13 Q This was not -- to your knowledge, this was
14 not recorded, the -- any attempts to direct people at
15 the Department of Justice back onto the sidewalk?

16 A I know of no such recordings.

17 Q Was a police line formed?

18 A That's not the information that I have been
19 able to -- that's not the information I have.

20 Q Based on your -- your information, there
21 was verbal persuasion used to encourage people to
22 step back onto the sidewalk?

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1 Q They did not, therefore, tell you, "Make
2 mass arrests"? Let me be more -- let's -- let me
3 restate it. They gave you the authority to make mass
4 arrests but they did not mandate that mass arrests be
5 made?

6 A I was directed to effect the arrests of the
7 group if the group refused to leave the street.

8 Q Within the policies and practices of the
9 MPD at the time, would it be appropriate to arrest,
10 in this specific context, a person who had solely
11 marched on the sidewalk the entire length of the
12 march?

13 A Repeat that, please.

14 Q In terms of within the policy and practice
15 that existed at the time, would it have been
16 appropriate for the MPD to arrest a person who had
17 solely marched on the sidewalk the entire length of
18 the march?

19 A No.

20 Q Why not?

21 A Again, arrests are made based on probable
22 cause. Someone majoring on the sidewalk is not

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1 engaged in unlawful activity, therefore, should not
2 and would not be arrested.

3 Q Let me ask you, then, about -- I'm going to
4 read to you a few questions and answers from the
5 deposition on May 4th, 2005, of Commander Michael
6 Radzilowski. I'm going to ask you whether this is,
7 in fact, an accurate or inaccurate statement, then,
8 on what the District's policy and practice was at the
9 time. The question is, "Would it be appropriate just
10 within the practices of the MPD to arrest within the
11 specific context a person who had solely marched on
12 the sidewalk the entire length of this march?" The
13 response from Radzilowski is, "Would it be the
14 general policy?" The question is, "Yes." His
15 response is, "Yes." The follow-up question is,
16 "Why?" And Commander Radzilowski says, "Because he
17 would be part of that group individually and as a
18 group that was incommoding the sidewalk and the
19 street." The follow-up to that is, "Even if he or
20 she within his or her own personal actions did not
21 violate any traffic law, didn't cross against a
22 light, for example, and remained on the sidewalk

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1 A Provided he wasn't involved in unlawful
2 activity, there is no probable cause that exists to
3 arrest that person. It is incumbent upon the
4 department to arrest only upon establishment of
5 probable cause.

6 Q And it is not -- it is not parading without
7 a permit, it is not considered to be unlawful
8 activity for an individual to accompany on the
9 outskirts, on the sidewalk, specifically, what the
10 police understand to be an unlawful march through the
11 street by a large contingent of persons?

12 A A person walking on the sidewalk with folks
13 in the street should not be charged with parading
14 without a permit.

15 Q Okay. And it is incumbent, then, where the
16 police would be making mass arrests for parading
17 without a permit, to ensure that within the group
18 they arrested, there were no such persons except for
19 persons who had, in fact, marched on the street?

20 A An arrest for parading without a permit is
21 based upon probable cause to arrest for parading
22 without a permit. I can't state it any other way.

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1 over the amplified or the loudspeaker of the police
2 car for the group to leave the street and continue on
3 the sidewalk.

4 Q So you're encountering the group and you're
5 in the rear of the procession at approximately 19th
6 Street and I?

7 A Yes.

8 Q And the group, as a body, as a general
9 matter, is moving westbound from that point?

10 A Correct.

11 Q Is it contained as one -- is it moving as
12 one group or as multiple groups?

13 A Excuse me. Sorry. Please repeat the
14 question.

15 Q Sure. Was this one unified group or did it
16 break into multiple groups as it was proceeding from
17 this point westward?

18 A It was somewhat fragmented at this point.

19 Q How did the -- what was the appearance of
20 that fragmentation?

21 A It was more strung out than a tightly
22 knotted cohesive group.

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1 A The group had become so strung out and
2 fragmented that I can't say if I was in the middle or
3 the end. I was amongst a large gathering of folks in
4 the street.

5 Q Were there protesters -- your cruiser comes
6 down 20th; correct?

7 A Yes.

8 Q Your cruiser turns right, you and your
9 cruiser turn right onto Pennsylvania?

10 A Right.

11 Q You drive down one block?

12 A Block-and-a-half or so.

13 Q Okay. Then do you make a maneuver with
14 your vehicle to turn it around?

15 A Yes.

16 Q At this point are there other law
17 enforcement personnel in the vicinity?

18 A Yes.

19 Q Who was there?

20 A By name, I don't know.

21 Q By physical description?

22 A I remember special operations division

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1 motorcycles that were there with us.

2 Q Where were they oriented? Where were they
3 physically positioned is what I mean?

4 A They were -- again, this was a fragmented
5 group. They were towards the front of a portion of
6 the group.

7 Q Were the motorcycles on Pennsylvania
8 Avenue?

9 A Yes.

10 Q Were they on I Street? And I understand
11 that I and Pennsylvania converge at a certain point
12 so if they were at that point of convergence, you can
13 tell me that, too.

14 A I remember the motorcycles on 20th -- I'm
15 sorry -- on Pennsylvania Avenue heading back to the
16 east.

17 Q Heading from 21st towards 20th?

18 A Correct.

19 Q Did you pass through them with your
20 vehicle?

21 A No.

22 Q I don't mean in any harmful way.

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1 group, not contained to the back or to the front or
2 to the sides. I reasonably assumed that everybody
3 heard me since these folks that were reacting to my
4 voice were interspersed within the group.

5 Q Were they interspersed between the group of
6 400 or within the entirety of the group?

7 A The group of 400 that I have been
8 concentrating on.

9 Q So your basis is that persons reacted
10 physically with a gesture and those persons who so
11 reacted were interspersed throughout the 400 that you
12 were focused on and that's what gives you the basis
13 to believe that those around them also heard what you
14 were saying?

15 A Yes.

16 Q What about the remainder of the persons
17 above the 400 all the way up to these number that is
18 less than a thousand that constitutes the entirety of
19 the procession?

20 A I don't know anything about what -- where
21 they went, what they did. I dealt with these -- the
22 400. There were many, many, many people that were

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1 not in that block so whether they heard or didn't
2 hear really had no effect on what I was doing with
3 the 400 that were stopped and arrested.

4 Q Is it your testimony, then, that the only
5 persons who were stopped and arrested as the police
6 lines were effected were the 400 that you were
7 focused on?

8 A Yes.

9 Q No one outside of the 400 that you were
10 focussed on were caught up in between the police
11 lines that surrounded that one block on 20th Street?

12 A Yes.

13 Q How were you able to identify those 400 as
14 distinct individuals from the up to 600 others that
15 were part of the march?

16 A The group remained on Pennsylvania Avenue
17 between my police car and a group of motorcycles.
18 This group remained intact as it turned north on 20th
19 Street. There were others that were in the park and
20 along the sidewalk on 20th and remaining on I
21 Street. These individuals remained in place as the
22 group that I had been dealing with entered that block

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1 Q So it was such a precision maneuver that
2 this line was effected literally in the midst of the
3 movement of persons that were going up 20th Street
4 northbound from the 400 that you had been monitoring
5 and that prevented anyone else from getting caught in
6 the arrest zone?

7 A I wouldn't call it a precision movement
8 when, in all actuality, that line was established
9 prior to everyone that I felt should be arrested from
10 entering into the arrest zone -- essentially folks
11 that were part of that group of 400 that I intended
12 to arrest were still on I Street when that police
13 line was brought across I Street. So less people
14 than I intended to arrest wound up being arrested.

15 Q Let me just see if I have a map.

16 A Okay.

17 MR. MESSINEO: Take a break if you want.

18 THE WITNESS: Please.

19 (Recess.)

20 BY MR. MESSINEO:

21 Q You felt that the District had probable
22 cause to arrest about 400 individuals alternately for

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1 parading without a permit or failure to obey; is that
2 accurate?

3 A Yes.

4 Q What was the probable cause to arrest those
5 persons that -- the up to 600 others?

6 MR. KOGER: Foundation.

7 BY MR. MESSINEO:

8 Q Was there probable cause that existed to
9 arrest any of those other persons that consist of the
10 group that was the up to 600 others?

11 A Yes.

12 Q Was there probable cause to arrest every
13 one of them?

14 A No.

15 Q Who -- who, among those additional up to
16 600, was there probable cause to arrest? You can
17 answer by category. I don't think --

18 A Part of the group of 400 that we have been
19 discussing that were cut off by the police line that
20 didn't make it into the block, there was probable
21 cause to arrest them. Others that were in I Street
22 or on I Street, others that were on 20th Street in

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1 the street, others that were on Pennsylvania Avenue
2 in the street, parading in the street and failing to
3 leave the street, there was probable cause to arrest.

4 Q That's and failing to leave the street upon
5 hearing a directive to leave the street?

6 A Any -- anyone parading in the street,
7 whether they heard or not heard -- did or did not
8 hear this warning were subject to arrest for parading
9 without a permit.

10 Q Now, you were monitoring a group of 400?

11 A Yes.

12 Q The police lines were established on the
13 southern part such that actually some portion of that
14 400 was not trapped inside the arrest zone?

15 A Correct.

16 Q And it is your testimony that from the
17 other areas that we described on I Street, the
18 sidewalks abutting I Street in either direction,
19 those individuals did not get trapped inside the
20 arrest zone; is that correct?

21 A They were not subject -- subjected to
22 arrest; correct.

1 Q Is it your understanding some number, then,
2 less than 400 were subjected to arrest?

3 A We are estimating numbers. This group was
4 about 400. About 400 were arrested. Some of that
5 group of 400 or more didn't make it into the block so
6 what I am saying is that somewhere around 400 people
7 were arrested in that block as to the way I remember.

8 Q The numbers are important here. Somewhere
9 around 400 were arrested within the block. That's
10 what you testified to.

11 A That's my estimation.

12 Q And the group that you were monitoring and
13 focused on were about 400?

14 A It was that very group; however, that whole
15 group was not arrested.

16 Q Then doesn't it seem obvious from the
17 numbers that some number of individuals who were
18 outside of that group were arrested?

19 MR. KOGER: Argumentative. Foundation.
20 You may answer.

21 THE WITNESS: Maybe I misspoke because we
22 have been doing this for so long.

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1 BY MR. MESSINEO:

2 Q Sure.

3 A There was an original group that was
4 somewhere around 400. That's the group that I
5 monitored, gave direction to, and wound up in this
6 block. A portion of that group, because of the
7 establishment of the southern police line, did not
8 make it into that block. Therefore, a smaller group,
9 whether it be 20 or 30 people smaller, did not get
10 arrested. So just to keep round numbers.

11 Q Sure.

12 A And, again, if I had 420 people that were
13 in the street and I intended to arrest those 420 and
14 the police line was established and only 400 made it
15 into the block, that's how those numbers roll out.
16 It is not -- if that answers what you are saying.

17 Q How far off are your numbers?

18 A I -- as I have been stating from the very
19 beginning, all these numbers that I have mentioned
20 are estimates. It could have been 2,000 people at
21 DOJ and it could have been 800 people in the block.
22 They are estimates and I testified to that from the

1 beginning, that these numbers are estimates.

2 Q So you have no idea whether there were 400
3 or 800 people in the --

4 A Again, those numbers that I testified to
5 are estimates.

6 Q But I want to --

7 A Sir, they are estimates.

8 Q I'm not fighting with you on this. They
9 are estimates and there are margins of error in
10 estimates. I'm trying to ascertain what the margin
11 of error is estimated to be in your estimate.

12 A Okay.

13 Q Are you there? Because if you are talking
14 about 400 but it might be 800, that's a significant
15 variation from if you are talking about 400 but you
16 mean it could be 375 to 425.

17 A When you estimate -- the difference between
18 a crowd the size of 400 and 600 is marginal. You
19 can't -- a casual observer can't tell that
20 difference. So if I give you an estimate of 400, you
21 can put a plus or minus 200 on that estimate. The
22 same with the estimate of a thousand; you can plus or

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1 minus two -- two, 300 when you are talking about a
2 thousand and still that's about as close as you are
3 going to get without doing a head count.

4 Q So when you say 400, you mean it could have
5 been as small as 200 and it could have been as large
6 as 600?

7 A No, that's not what I mean. You can tell
8 the difference between 200 and 400. 200 is a much
9 smaller group than 400.

10 Q 600 is 50 percent more than 400, not to
11 get -- not to get into too much mathematics but I
12 need to understand --

13 A I understand.

14 Q -- what the constraints are in your
15 estimate because you have said 200 -- you could have
16 200 as a margin of error. I have taken that and
17 said, well, then there could be 200 to 600 when you
18 say 400 and you say no, that's not right. And so I'm
19 trying to -- I would like for you to tell me.

20 A I would like to be able -- I would like to
21 be able to give you a more accurate number than what
22 I am giving you. It works -- looking at a crowd from

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1 my perspective is a ratio. 200 to 400 is a different
2 ratio from 400 to 600. I can't get you a better
3 answer from my observations than the answers I have
4 already given you.

5 Q After there is the arrest zone set up and
6 several hundred individuals arrested therein, how
7 much time elapsed between the establishment of the
8 two police lines that constitute the arrest zone and
9 when handcuffs were first placed on individuals? And
10 I understand that the process of handcuffing several
11 hundred may take some span of time so I'm actually
12 looking to ascertain how much time elapsed from the
13 establishment of the arrest zone to when handcuffs
14 initially began to be put on people's wrists, or
15 flexcuffs, as it may be.

16 A As I recall, it was 20 minutes, half an
17 hour, maybe.

18 Q And during that 20 minutes to half an hour,
19 what was going on?

20 A We were -- or there was the arrival of
21 prisoner transportation. The infrastructure for
22 arresting a significant number of people was being

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1 put together. There was taunts at the police officer
2 from folks in the crowd. There was another group now
3 that had established itself to the south of I Street,
4 which caused the establishment of a second police
5 line to hold a group of protesters away from the
6 police line that had been established to effect the
7 arrests. And then after that, it was a lot of
8 standing around until things were put in place.

9 Q During the 20 to 30 -- 20 minutes to half
10 an hour, was there consultation between you and
11 members of MPD command staff?

12 A There were discussions between myself and
13 command staff.

14 Q Okay. Between yourself and whom?

15 A Chief Gainer, Chief Ramsey, Commander
16 Acosta, Captain Sharkey.

17 Q This is all occurring in the 20 minutes to
18 half an hour before the first flexcuffs are applied
19 to arrestees?

20 A Correct.

21 Q During that period of time, what
22 communications occurred between you and command

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1 staff?

2 A The communications surrounded the decision
3 to make arrests.

4 Q And who was -- was there one huddle or
5 meeting of persons or were there multiple meetings,
6 multiple meetings with you and individuals, just if
7 you can use your own words to tell me how that
8 transpired?

9 A There was one -- one meeting between myself
10 and the commanders that I identified.

11 Q And were there other persons a part of this
12 communication who are not command staff that,
13 consequently, you haven't identified yet in response
14 to my questions?

15 A The meeting that I am talking about
16 occurred between myself, Chief Ramsey, Chief Gainer
17 Chief Acosta or Commander Acosta.

18 Q Sharkey?

19 A Captain Sharkey was in and out of the
20 meeting. She was involved with prisoner processing.

21 Q Physically where did the meeting take
22 place?

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1 probable cause for these arrests consists solely of
2 conduct alleged to have occurred from your arrival on
3 the scene to the moment of the arrest zone?

4 A No.

5 Q What is the District's position upon what
6 conduct formed the basis for the probable cause to
7 arrest these individuals?

8 A All the activity that occurred from the
9 time the group left their permitted area and
10 traversed through the city to the time they were
11 arrested.

12 Q And they left their permitted area when
13 they left the Department of Justice?

14 A Right.

15 Q And that includes their traveling on the
16 street constantly, willfully refusing orders and
17 directives to get up on the sidewalk as they
18 traversed from 10th over to 20th?

19 A Correct.

20 Q What are the range of offenses for which
21 the District asserts probable cause existed to arrest
22 all those who were arrested? You have identified ...

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1 parading without a permit and failure to obey. Are
2 there others?

3 A No.

4 Q With respect to failure to obey, can you
5 please identify so the record is clear all of the
6 orders that are encompassed within -- that were, in
7 fact, disobeyed? Maybe there was one; maybe there
8 was more; it is for you to tell me.

9 A The orders and directives that were
10 provided to the group from the time they left 10th
11 Street to 19th Street to the orders and directives
12 that were provided by me personally from that point
13 until the time of arrest.

14 Q And that second set of orders, the ones
15 provided by you personally, you are referring to the
16 amplified orders that were given while you were on
17 Pennsylvania Avenue between 21st and 20th through use
18 of amplified sound where you repeatedly told people
19 that if they didn't comply with certain directives,
20 they would be arrested?

21 A Yes.

22 Q All right. What we will do is take a look

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1 at some video?

2 A Now, you promise it doesn't bounce too much
3 so I don't need my Dramamine.

4 MR. SMITH: Red Cross is down the hall.

5 BY MR. MESSINEO:

6 Q They only speak French.

7 A That wouldn't help much. I don't know how
8 to say Dramamine in French.

9 Q Can you hand me the little clicky thing.
10 This is, for the record, a tape that was produced in
11 discovery already. It is the -- it is the portion of
12 video taken by Steven Olson. There is a time code on
13 the tape itself that reflects minutes, actual time of
14 day. That's what we will be using as a reference
15 point when we go through this.

16 A Hold on one second, please.

17 (Pause.)

18 Q By the way, before I look at that, did
19 Chief Ramsey approve these mass arrests?

20 A There was concurrence.

21 Q What's the distinction between concurrence
22 and approval?

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1 A It appeared to me that he agreed with the
2 actions that had been taken.

3 Q He took no actions to cause a cessation of
4 the mass arrests; correct?

5 A Correct.

6 Q He had the authority to do so had he wished
7 to; correct?

8 A Yes.

9 Q And you were communicating with him in
10 advance about the basis for these arrests, in advance
11 of even the first flexcuff being -- being placed on
12 an arrestee; is that correct?

13 A That conversation occurred with Executive
14 Assistant Chief Gainer, not Chief Ramsey.

15 Q Ramsey was not a party to that?

16 A I recall the conversation being between
17 myself and Chief Gainer.

18 Q Ramsey -- I'm sorry. I didn't mean to
19 interrupt you.

20 A Without Chief Ramsey there.

21 Q He was not present?

22 A I don't recall him being a party to the

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1 communication to be hearing it. Was he?

2 A I do not believe so.

3 Q How far away was he from the communication?

4 A 15 feet.

5 Q I swear I thought you said before that
6 Gainer, Ramsey, Acosta and at time Sharkey were
7 parties to this communication.

8 A Yes. To a communication that -- the
9 specific laying out of the details of what happened
10 was a conversation I had with Chief Gainer. Then
11 there was a larger gathering.

12 Q Okay. So there were two conversations?

13 A Yes.

14 Q All right. Let's break them down, then,
15 because I don't think that was clear from the
16 original testimony. So let's start with the first
17 conversation. The first conversation was -- who were
18 participants to the first conversation?

19 A Myself and Chief Gainer.

20 Q In this communication, what transpired?

21 A I laid out why the arrests were going to be
22 made.

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1 Q Did he put any questions to you about the
2 basis for these arrests?

3 A I'm sorry?

4 Q Did he put any questions to you about the
5 basis for these arrests?

6 A No.

7 Q None at all?

8 A No.

9 Q Was he listening to you?

10 A He appeared to be.

11 Q Did he convey to you his approval of the
12 arrests in the course of this communication?

13 A Repeat that, please.

14 Q Did he convey his approval to you of these
15 arrests in the course of this communication?

16 A Yes.

17 Q Was it then a subsequent communication with
18 you and anyone from command staff that pertained to
19 these -- the basis for these arrests?

20 A The communication was -- repeated the same
21 conversation. That's when the entire group was
22 there.

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1 A Not while I was laying out the reasons that
2 the arrests were being made.

3 Q And just to reconfirm this because you have
4 altered how many conversations there were since I
5 asked this before.

6 MR. KOGER: That mischaracterized the
7 testimony. There may have been a misunderstanding
8 about testimony as to an ongoing or multiple
9 conversations but the characterization of the
10 testimony in there is unnecessary and unhelpful.

11 MR. MESSINEO: The record speaks for itself
12 in that regard but your objection is noted.

13 BY MR. MESSINEO:

14 Q With respect to this -- the following
15 questions, did Chief Ramsey, after you communicated
16 to him the basis for the arrests, did he at any time
17 take any action to cause a cessation of the mass
18 arrests?

19 A No.

20 Q Did he have the authority to do so?

21 A Yes.

22 Q Did Chief Gainer have the authority to do

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1 so?

2 A Yes.

3 Q To this day, setting aside what happened
4 out on the scene and may have affected effects as
5 they transpired but to this day, has Chief Ramsey
6 ever expressed disapproval of these mass arrests?

7 A No.

8 Q Did Chief Gainer?

9 A No.

10 Q Is it the District of Columbia's position
11 that these mass arrests were conducted in a manner
12 consistent with policy?

13 A Yes.

14 Q And that these arrests were -- would be
15 repeated were the same circumstances to occur again?

16 MR. KOGER: Calls for speculation.

17 THE WITNESS: Yes.

18 MR. MESSINEO: Let's take a look at this
19 video now. We are starting at April 15th, 2000 at
20 3:36:15.

21 (Video played.)

22 UNIDENTIFIED VOICE ON VIDEO: Step up on

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1 conduct of the persons while they were in the arrest
2 zone convey to you that there were individuals who
3 were leaders or organizers of the -- this group?

4 A Not that I recall.

5 Q Were there persons with bull horns that
6 revealed themselves by their conduct and use of bull
7 horns to appear to be leaders or organizers?

8 A There were people with bull horns but
9 nothing that would indicate that they were
10 organizers.

11 Q What, if anything, would draw your
12 attention to an individual as an organizer/leader,
13 and I'm asking you to answer this personally based on
14 your many years of experience with protests.

15 A A lot of the times they will dress
16 differently. For me, speaking of me, it will
17 occur -- I'll know who the leaders of these organized
18 groups are because during the permit process I will
19 meet with them and we will figure out how to -- how
20 to make this thing work. So I will become personally
21 involved that way. Other demonstrations that I get
22 involved in, I will seek them out. Sometimes I'm

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1 question as to be independent specifically of the
2 last snippet or to encompass facts other than
3 reflected in the last video tape.

4 BY MR. MESSINEO:

5 Q The inquiry is as to the District of
6 Columbia's position based on all the information
7 available to it.

8 A Ask the question again, please.

9 Q Was the demonstration and march that
10 ultimately ended up in the mass arrests on April
11 15th, 2000, a peaceful demonstration?

12 A There was no violence involved in that
13 demonstration.

14 Q Was there vandalism?

15 A Not that I am aware of.

16 Q Was there assaults against police officers?

17 A No.

18 (Video played.)

19 MR. BECKER: -- police and all of the media
20 who are witnessing to remember that in 1970 in the
21 justice department when there was big demonstrations
22 during the Vietnam War, they did the same thing.

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1 were arrested?

2 A We are speaking specifically of this group
3 or are we speaking of general instructions given to
4 unit commanders that day? Because if you are
5 speaking -- then I have to retract my answer if we
6 are talking specific to this group.

7 Q We are talking about specific to this
8 group?

9 A Then please restate that question and the
10 answer that I gave in response to the question, I
11 misunderstood your question.

12 Q Were unit commanders instructed -- this is
13 in connection with the April 15th, 2000 mass
14 arrests -- were unit commanders instructed to issue
15 warnings to the crowd to disperse?

16 A No.

17 Q Was there consideration as to whether to
18 issue warnings to the crowd to disperse?

19 A Repeat that, please.

20 Q Did the District or the MPD consider
21 whether to issue warnings to the crowd to disperse?

22 A No.

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1 Q Why were no warnings to disperse issued?

2 A There was no reason to disperse the crowd.

3 Q You favored arrest over dispersal?

4 A No.

5 Q Under what circumstances would a crowd be
6 dispersed and assembled?

7 A If the crowd was static and it involved a
8 static demonstration, that would require a dispersal.

9 Q This was not a static demonstration?

10 A No. No, this was not a static
11 demonstration.

12 Q Was it concentrated in a relatively small
13 area?

14 A No.

15 Q It was expanded over what breadth of area?

16 A This demonstration lasted over 20 blocks.

17 Q Well, there are some demonstrations in the
18 District of Columbia that are sufficiently large that
19 actually the procession or the march spans itself 20
20 blocks; is that accurate?

21 A Yes.

22 Q This was not such a demonstration; correct?

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1 A Correct.

2 Q This demonstration, in terms of the amount
3 of space that it -- it was concentrated in, was
4 limited to about one block; isn't that correct?

5 A No.

6 Q How many blocks?

7 A At points up to five.

8 Q The period between the time it -- when
9 you -- when you reached it around 19th Street and the
10 arrests, what was the largest area over which the
11 demonstration was concentrated or not so
12 concentrated, as it may be?

13 A When I first observed it, it was probably
14 two-and-a-half to three blocks in length.

15 Q And at the time that you were giving
16 directives to people to get out of the street down
17 between 21st and 20th, what was the concentration or
18 lack of concentration of the demonstration at that
19 time?

20 A It was essentially spread out everywhere
21 between about 19th and I through 21st -- between 21st
22 and 22nd and Penn.

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1 were off the record so I'm not being -- I'm actually
2 not being flippant saying that.

3 A And I'm not trying to be flip in my answers
4 either.

5 Q There is no -- I think both of us are in
6 agreement that there is a lack of flipness on either
7 side of the table.

8 MR. KOGER: There is a lack of what?

9 MR. MESSINEO: Flipness.

10 THE WITNESS:

11 A So we agree on something else.

12 BY MR. MESSINEO:

13 Q But, genuinely, I am -- it is a question
14 that I need to have answered. I want you to be --

15 A Can I have a second to consult with Tom?

16 Q Yes.

17 MR. KOGER: That would be Mr. Koger on the
18 record.

19 THE WITNESS: Oh, I'm sorry.

20 (Recess.)

21 MR. KOGER: The representation to be made
22 is that we have not identified and our documents do

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1 not identify to us any arresting officers from the
2 April 2000 mass arrests and, accordingly, at this
3 point are unprepared to present any for deposition
4 next week as intended. Should that change, I will
5 notify all counsel immediately but I don't know how
6 to change that at this status.

7 BY MR. MESSINEO:

8 Q Resuming to what may be -- may be the
9 end -- I can't always anticipate your answers and so
10 when I make my time estimates, sometimes I'm off.

11 A I understand.

12 Q My last question to you was is it the
13 District of Columbia's position that no element of
14 this Manual for Mass Demonstrations and Responding to
15 Civil Disturbances would encompass or pertain to the
16 mass arrests that were engaged in on April 15th,
17 2000?

18 A That is not correct.

19 Q Okay: What elements of this manual
20 encompass those mass arrests?

21 A In reviewing the table of contents of the
22 manual and the limited documentation that's in front.

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