

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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RAYMING CHANG, <i>et al.</i> ,)	
Plaintiffs,)	
v.)	Civ. Action No. 02-02010 (EGS)(AK)
UNITED STATES, <i>et al.</i> ,)	
Defendants.)	
_____)	
JEFFREY BARHAM, <i>et al.</i> ,)	
Plaintiffs,)	
v.)	Civ. Action No. 02-02283 (EGS)(AK)
CHARLES H. RAMSEY, <i>et al.</i> ,)	
Defendants.)	
_____)	

**ADDITIONAL NOTICE BY PLAINTIFFS OF MORE LATE DISCLOSED
DOCUMENTS FROM DEFENDANT DISTRICT OF COLUMBIA¹**

In a filing to the Court, submitted yesterday, July 27, 2009, the *Chang* and *Barham* Plaintiffs (collectively the “Plaintiffs”) notified the Court that the District of Columbia (“District”) had in the last week produced a substantial number of documents to the Plaintiffs, years after discovery was propounded and long after the close of discovery -- and just a week before a hearing on plaintiffs’ motions for sanctions caused by the District’s loss or destruction of evidence. In those filings, Plaintiffs asserted that the District of Columbia’s practice of

¹ See also, Motion for Sanctions in *Chang* (Dkt. No. 418) and Motion for Sanctions and Related Relief in *Barham* (Dkt. No. 439), filed January 16 and 17, 2009, respectively.

producing withheld documents long after discovery is completed may not be over yet. (*See* Dkt Nos. 483 in *Chang*; 493 in *Barham*.)

Sadly, that prediction has turned out to be true. At 2:12 p.m. today, July 28, 2009 -- a day before the hearing with the Court -- the District transmitted by email yet another production of documents. No explanation or justification accompanied the production. *See* Cover Email from Chad Copeland, attached as Exhibit 1. Although counsel has only begun to review the production, the majority of the documents produced today appear to have been taken from the files of the Office of the Attorney General (then called the Office of the Corporation Counsel), making their belated production all the more puzzling. In fact, the noticed counsel for the District through the history of these cases, including Thomas Koger, Leonard H. Becker, and Robert C. Utiger, are each identified as the original recipients of some of these documents, negating any suggestion that these documents were simply misplaced by other organizations of the District of Columbia.

Once again, this material raises a host of questions that would have been pursued in discovery in numerous depositions. Many relate to communications involving members of the Corporation Counsel's Office regarding the status and no-papering of Pershing Park arrestees. In addition, at the end of the group of documents is one labeled "00398 2009.1 Supp," that appears out-of-place. It is email correspondence dated March 6, 2003 (more than five months after the arrests) between then Chief of Police Charles Ramsey and then Deputy Mayor Margaret Kellems. It is both directly relevant and highly material to the issues in these cases that were subject to years of discovery without benefit of this disclosure. The email indicates that the Chief of Police and the Mayor's office were editing and coordinating the "official" memo from Chief Ramsey sent to the Mayor in March 2003. The email appears to show that Chief Ramsey's office sent at least one draft of the memo in advance to the Mayor's office for review and that

Deputy Mayor Kellems sent back a red-lined version. In response to Deputy Mayor Kellem's edits, the email message from Chief Ramsey states in part:

I also do not feel that adverse action is appropriate in this case. Some warnings were given but not in a manner in which they could be heard at all. In the future, we will use bullhorns to do so when practical. KP by releasing the findings did far more damage to the City. These events are extremely difficult to handle. I have personally spoken to Newsham about this and other command officials and everyone is clear as to the guidelines. I think that is sufficient.²

See Exhibit 2. The draft documents which were attachments to the original emails referenced in this email correspondence, apparently even now have not been produced to the Plaintiffs by either the District or Chief Charles Ramsey, despite their clear relevance and significance to the case. This email from Chief Ramsey is dated after a report was released by the MPD Office of Professional Responsibility which specifically discussed that no such warnings were given.

Another document, labeled "00373 2009.1 Supp," is an email dated December 9, 2002, between attorneys in the Office of Corporation Counsel, in which attorney Stacy Anderson states that defendants in Pershing Park cases were being no papered because "we have already determined that we cannot make a case." This email was dated just over two months after the mass false arrests in Pershing Park, yet the District has failed to produce it during the nearly seven years that it has required Plaintiffs' counsel to litigate that very fact -- that the District could not make a case for the arrests in Pershing Park. This document is central to the District's base of knowledge.

² "KP" may refer to District Councilmember Kathy Patterson who was holding hearings on the arrests of September 27, 2002. "Newsham" appears to refer to Assistant Chief Peter Newsham, also a defendant in these cases

Once again, the District's production of even more documents, on the very eve of the hearing on sanctions³, points to the need for taking the harshest possible measures to deal with the District's continuing and reckless disregard of both the federal rules of discovery and this Court's prior orders.

Respectfully submitted,

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³ Plaintiffs note that even these late produced documents are not responsive to the issues briefed in Plaintiffs' pending Motions for Sanctions involving lost and destroyed material and other evidence that still has not been recovered or produced.

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