

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

RAYMING CHANG, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civ. Action No. 02-2010 (EGS)(JMF)
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	
JEFFREY BARHAM, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Civ. Action No. 02-02283 (EGS)(JMF)
v.	)	
	)	
CHARLES H. RAMSEY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**NOTICE OF AFFIDAVIT FILED BY MPD DETECTIVE PAUL HUSTLER**

The purpose of this Notice is to inform the Court of critical information related to the deposition of Metropolitan Police Department (“MPD”) Detective Paul Hustler previously scheduled for last Friday, November 13, 2009. The deposition was initially noticed by the Barham plaintiff class, such noticed later by the Chang plaintiffs. Because the information relates to the pending sanctions motion as well as issues raised by the Court (including the possible criminal investigation of misconduct in the case), Plaintiffs felt that the Court should be immediately informed.

In yesterday’s hearing, the Court addressed the effort of the District, through the Office of Attorney General (“OAG”), to bar the Plaintiffs from taking the deposition of Detective

Hustler, which was scheduled for and then cancelled last week. After meeting with Detective Hustler and learning the nature of his expected testimony, the District moved for a protective order to bar the deposition. (*See* Dkt. Nos. 557 in *Chang*; 566 in *Barham*.) In that filing and before the Court yesterday, District counsel made various arguments for barring the deposition entirely – even though Detective Hustler is not represented by the OAG and has other counsel.

In opposition to that motion and in yesterday's status hearing before this Court, *Chang* counsel raised the issue and discussed the relevance of Detective's Hustler's possible testimony. (*See* Dkt. No. 558 in *Chang*.) The Court ordered the deposition of Detective Hustler to go forward under the supervision of the Marshall Service or Magistrate Facciola.<sup>1</sup>

Following the hearing, counsel for both *Chang* and *Barham* jointly reviewed an affidavit that had been submitted by Detective Hustler that disclosed the evidence that would have been presented in the deposition. (*See* Hustler Affidavit, attached as Exhibit 1.)<sup>2</sup> The evidence is extremely disturbing and contradicts prior sworn representations given to the Court and plaintiffs during the past seven years of litigation of this matter as well as the investigation into the Pershing Park arrests undertaken by the District of Columbia Council. The affidavit details the actions and observations of Detective Hustler on September 27, 2002, including his observations of the orders given for the mass arrest in Pershing Park..

Detective Hustler's affidavit reveals that he not only personally observed Ramsey directly order the mass arrests, coupled with an improper motive but further reveals that other officers expressed opposition to the order. In his affidavit, Detective Hustler, a 22-year veteran of the force, describes how hundreds of individuals, including the Plaintiffs in the two cases,

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<sup>1</sup> The transcript from yesterday's hearing is not yet available, although Plaintiffs anticipate receiving a copy by Friday, November 20, 2009.

<sup>2</sup> In light of the affidavit, Plaintiffs withdraw their notice and request for the deposition of Detective Hustler.

were “funneled” into Pershing Park, trapped within the Park, and then apprehended, all without probable cause.<sup>3</sup>

Detective Hustler further states that, while at Pershing Park, he was within a few feet of several of the named Defendants in these cases, including then-MPD Chief Charles Ramsey, and Assistant Chiefs Peter Newsham, Brian Jordan, and Michael Fitzgerald. (*Id.*)<sup>4</sup> As he got closer to these individuals, Detective Hustler states “I heard Chief Ramsey say **we’re going to lock them up and teach them a lesson.**” (*Id.*) (emphasis added.)<sup>5</sup>

Detective Hustler also states that he started to leave the scene of the arrests after another witnessing officer, Sergeant Duane Bueth, told him “let’s go, this isn’t right.” (*Id.*) On his way, he was approached by a member of the press, who was trapped within the park but asked to be released. (*Id.*) Detective Hustler raised this request to Assistant Chief Brian Jordan, who responded “nobody leaves.”<sup>6</sup> (*Id.*) Detective Hustler also states that an unidentified U.S. Park Police Lieutenant also stated that they were not going to participate” in the arrests and were instead “going to pull out.”<sup>7</sup> (*Id.*)

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<sup>3</sup> The Barham class comprises nearly 400 people who were falsely arrested in Pershing Park and then hog-tied in stress and duress positions for upwards of 24 hours on a police gym floor.

<sup>4</sup> Chief Ramsey and Assistant Chief Newsham are defendants in both the *Chang* and *Barham* matters. Assistant Chiefs Jordan and Fitzgerald are also defendants in the *Chang* matter.

<sup>5</sup> Hustler’s description largely tracks that of MPD Captain Ralph McLean, who gave a deposition on September 7, 2004 in which he described observing a meeting between Chief Ramsey, Assistant Chiefs Newsham, Jordan and Fitzgerald. McLean testified “At one point in time I heard the Chief say, ‘Lock ‘em up.’” (Tr. of McLean Deposition at 177-181, attached as Exhibit 2.)

<sup>6</sup> As this Court is aware, the *Chang* Plaintiffs are comprised of then student journalists and legal observers.

<sup>7</sup> The National Park Service and Park Police Major Richard Murphy are defendants in the *Chang* matter. Park Police Major Richard Murphy is a defendant in the *Barham* class action.

This testimony directly contradicts the sworn statements of former Chief of Police Charles Ramsey and other top District officials, such as Assistant Chief Brian Jordan. For example, in previous testimony, the District and Chief Ramsey sought to attribute the order to arrest the hundreds of people in Pershing Park without probable cause solely to Assistant Chief Peter Newsham. Newsham in turn seemingly took responsibility for the order. In depositions and in various filings, Ramsey and the District portrayed Ramsey as a largely passive actor in the arrests. These theories and arguments were critical not only to Ramsey's personal defense but also to the District's defense of *Monell* liability claims.

These statements raise troubling questions about prior testimony and statements to the Court not only by former Chief Ramsey and Assistant Chief Jordan, but also the entire District of Columbia government and the Metropolitan Police Department. For example, Chief Ramsey, in a deposition, under oath, stated "I did not order any arrests at any scene during the course of that day." (Transcript of September 19, 2007 deposition of Charles Ramsey at 469, excerpts attached as Exhibit 3.)

Chief Ramsey had previously attempted to distance himself from the arrests. When questioned at a February 25, 2003 hearing before the Judiciary Committee of the D.C. Council, Charles Ramsey testified that he was not a part of the decision making for the Pershing Park mass arrest.

Council Member Patterson: "And you were not a part of that decision making yourself?"

Chief Ramsey: "No. When I came up on the scene, actually, that was already practically in progress."

See Ex. 4 (Council of the District of Columbia March 24, 2004 Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia ) at 97.

At a December 18, 2003 Council investigatory hearing, upon questioning by Special Counsel Mary Cheh, Ramsey conceded that he did approve of the decision to arrest the persons at Pershing Park. See Media Exhibit 1B (testimony of Ramsey before D.C. Council, December 18, 2003); Ex. 4 (Council of the District of Columbia March 24, 2004 Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia) at 98.

In his September 18, 2007 video deposition in the Barham case, when asked whether he was a part of the Pershing Park mass arrest decision making, Ramsey then testified he was not.

Q: Sir, were you a part of the decision making, the decision to arrest the several hundred persons in Pershing Park as a group?

A: No, not directly.”

See Ex. 5, Transcript of September 18, 2007 Ramsey Deposition at 27:19 – 22; Media Ex. 1A (video deposition of Charles H. Ramsey).

In that deposition, Ramsey again denied approving the mass arrest.

Q: At the time of the arrest and at the scene of the arrest, before they began, you approved the mass arrest; isn't that correct, sir?

A: No, it's not correct.

Ex. 5, Transcript of September 18, 2007 Ramsey Deposition at 29:18 – 22; Media Ex. 1 A (video deposition of Charles H. Ramsey).

Ramsey was confronted with a video replay of his December 18, 2003 testimony before the D.C. Council in which he admitted he did approve of the decision to make the arrests. He confirmed that was video of himself, and that he had been testifying under oath.

Ramsey again denied that he approved the mass arrest.

Q: [after confronting Ramsey with video of his December 18, 2003 testimony in which he admitted to approving the mass arrest decision] Let me ask you here again, did you approve the decision to make the mass arrest?

A: No.

Ex. 5, Transcript of September 18, 2007 Ramsey Deposition at 35:20 – 22; Media Ex. 1 A (video deposition of Charles H. Ramsey).

After being questioned further about the apparent substantial inconsistency in his statements regarding whether he did approve the mass arrest at the scene, then Ramsey admitted again that he did approve the mass arrest.

Q: Did you approve of the decision to make the mass arrest?

A: At the time, yes.

Ex. 5, Transcript of September 18, 2007 Ramsey Deposition at 37:13 – 15; Media Ex. 1 A (video deposition of Charles H. Ramsey)

On September 18, 2007, Chief Ramsey also had the following colloquy with Plaintiffs counsel:

Q When you approved the arrest of nearly 400 people as a group at Pershing Park, did you do so on the basis of insufficient information?

A Well, first of all, sir, I didn't say that I approved the arrests. I mean, the way in which you've phrased the question, I would certainly, you know, take exception to. I have stated before that I approved of his decision, which is different than me approving the arrests, in my mind, anyway. But I haven't had the benefit of legal training. But in my mind, I believe those to be two different things.

Q Sir, can you elaborate on the distinction that you are drawing? Because I don't –

A Yes.

Q -- fully understand, and I think it would be helpful.

A If I approve and affirmatively -- in other words, I've observed, I've seen, I feel that I have enough information, and I am ordering an arrest be made, based on that. And I did not do that, nor do I have to do that. Police officers make arrests every day throughout this city, and they don't call the chief to find out if it's okay.

Ex. 5, Transcript of September 18, 2007 Ramsey deposition at 44-45. Chief Ramsey previously stated:

[Assistant Chief] Newsham ordered the arrests of the persons in Pershing Park . . . Based upon the information that I had received, I did not countermand his decision and order. [Assistant Chief] Newsham, or any police officer for that matter, does not have to obtain my approval before commencing an arrest.

(Affidavit of Charles Ramsey, dated February 9, 2004, at Para. 21, attached as Exhibit 6.) In an earlier affidavit, in another attempt to show that did not order the arrests, Chief Ramsey stated:

I believed, based upon the conversation that EAC Fitzgerald and I had with Assistant Chief Newsham, that probable cause existed to support the arrests of the persons in Pershing Park. Assistant Chief Newsham, or any police officer for that matter, does not have to obtain my approval before commencing an arrest. I did not realize, at that point, that the park had not, in fact, been cleared of people before it came to be a holding area for individuals that officers had observed engaged in illegal conduct before those individuals entered the park.

(Affidavit of Charles Ramsey, dated October 15, 2003, at Para. 23, attached as Exhibit 7.) A collection of video-transcripts of statements made by former Chief Ramsey, contradicted on their face by Sergeant Hustler's affidavit, are filed as Media Exhibits 1A and 1B.

Detective Hustler's affidavit is also significant because he states that "the events and the actions of the MPD officials on the scene would have been documented by police radio transmissions and a running resume of the chain of events." (Hustler Affidavit at 2, attached as Exhibit 1.)

Plaintiffs have filed extensive motions for sanctions based on the destruction of the JOCC Running Resume and all electronic backups and hard copies, the apparent editing of audio tapes

containing multiple channel radio runs which are missing recording data at the time the arrest order was being given and carried out, and other discovery abuse. Plaintiffs have asserted that the material that would have been contained in this contemporaneous evidence would have documented the actions of the MPD Chief and Assistant Chiefs, including the time of arrival and the decision to arrest those within Pershing Park. Detective Hustler's affidavit supports those assertions and now supplies some of the information that may have been revealed by such evidence, to wit, the direct order of Chief Ramsey to arrest anyone in the trap zone.

The affidavit has obvious relevance to the missing evidence and any motivation for alleged destruction of such evidence. As such, Plaintiffs feel the affidavit should be made part of the record for the Court as it considers any referral as well as sanctions in this case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2009, I caused copies of the foregoing to be served by electronic means, upon the following:

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