

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,

Plaintiff,

v.

COUNTY OF SAINT LOUIS, MISSOURI,
RONALD K. REPLOGLE, in his official
capacity as Superintendent of the Missouri
Highway Patrol, and JOHN DOES 1-5, in their
individual capacities,

Defendants.

CASE NO. 4:14-cv-1436 CDP

MEMORANDUM IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	3
A. Events Prior to the Five-Second Rule.....	3
B. The Establishment of the Five-Second Rule	4
C. TRO Proceedings.....	5
D. Inconsistent Enforcement of the Five-Second Rule	6
E. The Inadequacy Of The PAZ.....	8
III. ARGUMENT	9
A. Standard for a Preliminary Injunction	9
B. Plaintiff is Likely to Prevail on the Merits.	10
1. The Five-Second Rule Violates the Due Process Clause.	10
2. The Five-Second Rule Violates Plaintiff’s First Amendment Rights to Freedom of Assembly and Freedom of Speech.....	14
(a) The Five-Second Rule Gives Overly-Broad Discretion to Officers.	14
(b) The Five-Second Rule Does Not Further The Asserted Government Interest, Is Not Narrowly Tailored, and Fails To Leave Open Ample Alternative Channels.....	15
C. The Remaining <i>Dataphase</i> Factors Also Favor Issuance of a Preliminary Injunction.....	21
IV. CONCLUSION	22

TABLE OF AUTHORITIES

	<u>Page(s)</u>
FEDERAL CASES	
<i>Bay Area Peace Navy v. United States</i> , 914 F.2d 1224 (9th Cir. 1990)	19
<i>Coates v. City of Cincinnati</i> , 402 U.S. 611 (1971)	15
<i>Cohen v. San Bernardino Valley Coll.</i> , 92 F.3d 968 (9th Cir.1996)	10
<i>Dataphase Sys., Inc. v. C L Sys., Inc.</i> , 640 F.2d 109 (8th Cir. 1981)	9, 10
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	21
<i>F.C.C. v. Fox Television Stations, Inc.</i> , 132 S. Ct. 2307 (2012)	10
<i>Forsyth Cnty., Ga. v. Nationalist Movement</i> , 505 U.S. 123 (1992)	15
<i>Foti v. City of Menlo Park</i> , 146 F.3d 629 (9th Cir. 1998)	19
<i>Gilleo v. City of Ladue</i> , 986 F.2d 1180 (8th Cir. 1993), <i>aff'd</i> , 512 U.S. 43 (1994)	16
<i>Kolender v. Lawson</i> , 461 U.S. 352 (1983)	13
<i>McCullen v. Coakley</i> , 134 S.Ct. 2518 (2014)	15, 16, 17
<i>Minn. Citizens Concerned for Life, Inc. v. Swanson</i> , 692 F.3d 864 (8th Cir. 2012) (<i>en banc</i>)	10, 21
<i>Niemotko v. State of Md.</i> , 340 U.S. 268 (1951)	15
<i>OSU Student Alliance v. Ray</i> , 699 F.3d 1053 (9th Cir. 2012) <i>cert. denied</i> , 134 S. Ct. 70 (U.S. 2013).....	16

TABLE OF CONTENTS
(continued)

	Page
<i>PCTV Gold, Inc. v. SpeedNet, LLC</i> , 508 F.3d 1137 (8th Cir. 2007)	10
<i>Phelps-Roper v. Nixon</i> , 545 F.3d 685 (8th Cir. 2008)	21
<i>Planned Parenthood v. Rounds</i> , 530 F.3d 724 (8th Cir. 2008)	10
<i>Reno v. Am. Civil Liberties Union</i> , 521 U.S. 844 (1997)	11
<i>Smith v. Goguen</i> , 415 U.S. 566 (1974)	11
<i>Stahl v. City of St. Louis, Mo.</i> , 687 F.3d 1038 (8th Cir. 2012)	10
<i>Thomas v. Chicago Park Dist.</i> , 534 U.S. 316 (2002)	14
<i>United States v. Grace</i> , 461 U.S. 171 (1983)	19
<i>United States v. Playboy Entm't Grp., Inc.</i> , 529 U.S. 803 (2000)	16
<i>Watkins Inc. v. Lewis</i> , 346 F.3d 841 (8th Cir. 2003)	10
STATUTES - OTHER	
Mo. Ann. Stat. § 574.040	19
Mo. Ann. Stat. § 574.060	19
Mo. Legis. Serv. S.B. 491 (2014)	19
OTHER AUTHORITIES	
Aisha Sultan, <i>Why Ferguson burned: Explaining St. Louis area riot to kids, outsiders</i> , ST. LOUIS POST-DISPATCH, Aug. 11, 2014	3
Amanda Terkel, <i>Capt. Ron Johnson Defends New Protest Rules in Ferguson: 'We're Not Violating Your Rights'</i> , THE HUFFINGTON POST, Aug. 18, 2014	12

TABLE OF CONTENTS
(continued)

	Page
Josh Voorhees, <i>Everything That Went Wrong in Ferguson</i> , SLATE, Aug. 21, 2014	3
Leah Thorsen & Steve Giegerich, <i>FERGUSON DAY ONE WRAPUP: Officer kills Ferguson teen</i> , ST. LOUIS POST-DISPATCH, Aug. 10, 2014	3
Matthew Dolan, Pervaiz Shallwani & Ben Kesling, <i>Strong Police Presence Felt After Night of Violence in Ferguson</i> , THE WALL STREET JOURNAL ONLINE, Aug. 19, 2014	18
Michele Munz & Lisa Brown, <i>After 12 days of unrest in Ferguson, the stress is taking a toll</i> , ST. LOUIS POST-DISPATCH, Aug. 20, 2014	18

I. INTRODUCTION

Just over one week ago, Defendants instructed their law enforcement officers to begin enforcing a new rule in the area where demonstrators had congregated on the sidewalks of Ferguson, Missouri. This rule has no statutory or regulatory reference number; its terms have not been released to the public in print. To even give this rule a name is challenging since law enforcement has invoked the rule to prohibit such disparate conduct as standing still for more than five seconds, standing still at all, and walking back and forth over hundreds of yards in the protest area. But for ease of reference, we will call it the “five-second rule.”

Within hours of the rule’s initial implementation, this lawsuit was filed, a temporary restraining order (“TRO”) was sought, and a TRO hearing was held. At that hearing, counsel for Defendant Replogle represented to this Court that a new free speech zone had been established and that the new rule was designed to “coordinate the crowd to congregate at this predesignated area.” Relying in part on those representations, this Court denied the TRO.

But Defendant’s representations proved untrue. A full day would pass before a designated zone—the so-called Protester Assembly Zone (“PAZ”)¹—was established outside of the area that had been the focal point of demonstrations. Moreover, the five-second rule has not been used in any systematic manner to usher protestors into the PAZ, which remains a virtual ghost-town of a parking lot.

¹ The PAZ has been referred to alternatively as the Approved Assembly Area and the Alternative Protest Zone, and may have other names—but they all refer to the same location: the parking lot at 9026 West Florissant Ave.

Events since the TRO hearing have made clear that the five-second rule violates due process and the First Amendment. As the evidence gathered in the week since the rule's adoption establishes, Plaintiff is likely to prevail on the merits for at least three reasons:

First, Defendants' arbitrary application of the five-second rule violates due process and the First Amendment. Plaintiff and other citizens visiting the protest area have no way to determine whether they will face imprisonment for marching on the sidewalks, pausing to catch their breath, gathering around a civil rights leader, engaging in group prayer, requesting information from law enforcement, or stopping to console a person in need. Indeed, citizens engaged in each of these lawful activities have faced threats of arrest or demands to leave the area from officers granted the discretion to selectively enforce the five-second rule.

Second, in practice, the five-second rule has stoked—not restrained—tension on the sidewalks of Ferguson, and thus has undermined—not promoted—public safety. Any claim by Defendants that the five-second rule is necessary for public safety is belied by their officers' erratic enforcement of the rule. Indeed, an expert in police practices has confirmed that prohibiting protesters from standing still is not an effective means of promoting safety and that arbitrary implementation of vague rules can escalate unrest.

Finally, the PAZ has proved an inadequate alternative for Plaintiff and others attending the Ferguson demonstrations. Situated far from the designated media staging area and beyond the symbolic center of the demonstrations, the PAZ does not allow speakers to convey their messages to their intended audiences.

In sum, Plaintiff's motion for a preliminary injunction should be granted.

II. FACTUAL BACKGROUND

A. Events Prior to the Five-Second Rule

On August 9, 2014, a City of Ferguson police officer shot and killed Michael Brown, a young African American male who was unarmed.² The shooting of Michael Brown sparked protests and demonstrations in Ferguson and a significant law enforcement response.³

Plaintiff, a Program Associate for the ACLU of Missouri, attended the protests on Thursday, August 14—four days before the five-second rule was implemented. (Declaration of Mustafa Abdullah (“Abdullah Decl.”) at ¶ 13.) That night, law enforcement permitted those attending the demonstrations to remain stationary, and Plaintiff did not perceive any threat of violence from those who were standing still. (*Id.* ¶¶ 14-15.) Plaintiff distributed approximately 400 “know your rights” cards that evening. (*See id.* ¶ 16 & Ex. A.) Plaintiff’s and others’ ability to gather and stand in one place facilitated Plaintiff’s ability to reach so many demonstrators.⁴ (*Id.* ¶¶ 14-16, 19.)

Another ACLU of Missouri observer visited Ferguson three times between the shooting and the establishment of the five-second rule on August 18. (Declaration of Grant Doty (“Doty

² Leah Thorsen & Steve Giegerich, *FERGUSON DAY ONE WRAPUP: Officer kills Ferguson teen*, ST. LOUIS POST-DISPATCH, Aug. 10, 2014 (Ex. A to Declaration of Thomas Clancy in support of Request for Judicial Notice (“RJN”), filed concurrently herewith); Aisha Sultan, *Why Ferguson burned: Explaining St. Louis area riot to kids, outsiders*, ST. LOUIS POST-DISPATCH, Aug. 11, 2014 (RJN Ex. B).

³ Thorsen & Giegerich, *FERGUSON DAY ONE WRAPUP* (RJN Ex. A); Josh Voorhees, *Everything That Went Wrong in Ferguson*, SLATE, Aug. 21, 2014 (“Fearing the worst about what was then [on August 10] still a largely peaceful demonstration, authorities responded by deploying officers in military-grade riot gear and armored trucks”) (RJN Ex. C).

⁴ These cards educate people on their rights when encountering law enforcement (such as when citizens are stopped in the street or when law enforcement asks to search their home). (Abdullah Decl. ¶ 16.)

Decl.”) at ¶¶ 3, 22). During none of these visits did Mr. Doty observe anything other than peaceful protests. (*See id.* ¶ 5-6.)

B. The Establishment of the Five-Second Rule

At around 11:00 a.m. on August 18, Plaintiff heard reports that law enforcement officials were ordering individuals who were violating no law to refrain from gathering or standing for more than five seconds on public sidewalks and that law enforcement had threatened demonstrators with arrest for non-compliance with this rule. (Abdullah Decl. ¶ 20.) Plaintiff went to Ferguson to investigate the reports. (*Id.* ¶ 21.)

While there, on five separate occasions in approximately one hour, Plaintiff was ordered by law enforcement officials to refrain from gathering or standing for more than five seconds on public sidewalks or to leave the area, and was repeatedly threatened with arrest if he did not comply with the orders. (*Id.* ¶ 22.) Officers warned Plaintiff of the rule, to leave the area, or to get to where he was going when he was standing, stopping to catch his breath, walking back and forth over a distance of three-tenths of a mile, gathering around a civil rights leader, and praying with a local pastor. (*Id.* ¶¶ 23-27.) During this time, Plaintiff was not violating any statute or regulation. (*See id.* ¶¶ 4, 7.)

That same day, Jo Holbrook, a Ferguson native, went to the protest area. (Declaration of Jo Holbrook Decl. (“Holbrook Decl.”) at ¶ 8.) As soon as she stepped into the area, law enforcement officers ordered her to keep moving under threat of arrest. (*Id.* ¶ 9.) The officers did not inform Ms. Holbrook that she could stand still for five seconds or less; rather, she was told that she always had to be moving. (*Id.* ¶ 11.) Law enforcement officers threatened Ms. Holbrook with arrest for violating the five-second rule at least six times that day. (*Id.*) And Ms. Holbrook witnessed many others, including Plaintiff, likewise threatened with arrest for violating the rule. (*Id.* ¶ 14; *see* Holbrook Decl. Ex. C.)

The five-second rule interfered with Ms. Holbrook's ability to communicate in the protest area. For example, when she saw a woman who was approximately 60 years old crying on the street, she felt she could not stop and comfort the woman without being subject to arrest. (*Id.* ¶ 15.) Officers never informed Ms. Holbrook that day of a Protester Assembly Zone ("PAZ") in which she could remain standing. (*Id.* ¶ 19)

Also on August 18, Joel Reinstein, a legal observer for the National Lawyers Guild, learned that police officers had begun enforcing a five-second rule. (Declaration of Joel Reinstein ("Reinstein Decl.") at ¶ 6.) Mr. Reinstein arrived at the protest zone at around 8:30 or 9:00 p.m., and observed that the officers were not enforcing the five-second rule uniformly. (*Id.* ¶¶ 5-7.)

Grant Doty also observed inconsistent enforcement of the five-second rule that night (his fourth visit to Ferguson that week). (Doty Decl. ¶¶ 17-18.) In particular, Mr. Doty saw the rule being enforced more aggressively against people of color and younger people, but being enforced only occasionally against older white people. (*Id.* ¶ 18.) Mr. Doty observed that enforcement of the rule appeared to vary, depending on which law enforcement officers were applying it. (*Id.* ¶¶ 17-18.) Mr. Doty also observed a tension he had not seen in any of his previous three visits to Ferguson. (*Id.* ¶ 22.) After speaking to protestors unhappy with having to keep moving, Mr. Doty attributed this heightened tension in part to the newly implemented five-second rule. (*Id.* ¶ 22.)

C. TRO Proceedings

On August 18, Plaintiff Abdullah filed a verified complaint and a TRO motion challenging the five-second rule as a violation of the First and Fourteenth Amendments. (Complaint, *Abdullah v. Cnty. of St. Louis, Mo., et al.*, Index No. 4:14-cv-1436, Doc No. 1 (filed Aug. 18, 2014); TRO.) This Court held a TRO hearing that evening. (Doc. No. 12, Temporary

Restraining Hearing Transcript (“TRO Tr.”) of Aug. 18, 2014, *Abdullah v. Cnty. of St. Louis, Mo., et al.*, Index No. 4:14-cv-1436 (dated Aug. 22, 2014).) At the hearing, Plaintiff testified about his experiences with the five-second rule on August 18. (*Id.* at 5:11-11:24.)

On cross-examination of Plaintiff, Chris Koster, Attorney General for the State of Missouri, asked Plaintiff whether he was aware that before 2:30 p.m. that day, law enforcement announced the establishment of an alternative protest zone, in which “there was ample space there for protestors to gather even in the thousands, three to four acres of open land there where emergency personnel were . . . asking people to protest.” (*Id.* at 26:5-9; 26:18-25.) During the hearing, Andrea Spillars, Deputy Director and General Counsel for the Department of Public Safety, testified that the prohibition against standing was designed to encourage people to “disperse and go to the other area [*i.e.*, the PAZ] to protest.” (*See id.* at 34:7-9, 35:1-6.)

On the limited record available, this Court denied the TRO. In so doing, the Court noted that “with the establishment of the alternative site, I don’t believe the plaintiff has shown the threat of irreparable harm” and that time, place, manner restrictions of First Amendment rights “have been upheld . . . especially whereas here there is an alternate site that has been set up. And so I think that the likelihood of success on the merits is not clear.” (*See id.* at 43:17-20; 44:9-13.) The Court further noted that the due process concerns were a close question because “under the current practice . . . there’s no way anyone would know what is prohibited and what isn’t prohibited, and that I believe does have constitutional problems,” but that “the issue of public safety” and law enforcement’s “right to tell people to move out of an area where crimes are . . . being committed” made it unclear “who would prevail” on the merits. (*Id.* at 43:23-44:8.)

D. Inconsistent Enforcement of the Five-Second Rule

Evidence indicates that in the days since the TRO hearing, police officers have inconsistently enforced the five-second rule in the protest area. (*See, e.g.*, Abdullah Decl. ¶¶ 33-

36; Doty Decl. ¶¶ 39-42, 44-48.) For example, on one day, while Ms. Holbrook was being interviewed by a reporter, law enforcement officers instructed Ms. Holbrook and the reporter to keep moving. (Holbrook Decl. ¶¶ 20-21.) But on another day, she observed that law enforcement was not forcing individuals to keep moving. (*Id.* ¶¶ 24-26.)

On August 19, Mr. Doty observed law enforcement arrest an African American woman in the protest area, apparently for failing to comply with the five-second rule. (Doty Decl. ¶ 41). But on that day and others, Mr. Doty also has observed certain police officers permitting individuals to remain stationary in the protest area without rebuke, while other officers were ordering different individuals to keep moving. (*Id.* ¶¶ 42, 48.)

Mr. Reinstein also observed inconsistent enforcement of the five-second rule. On August 19, he witnessed an arrest taking place in front of a Family Dollar store. When Mr. Reinstein tried to obtain the name of the person being arrested so that the National Lawyers Guild could provide him with legal assistance, another police officer commanded Mr. Reinstein to keep moving. (Reinstein Decl. ¶ 9.) Before Mr. Reinstein asked for the arrestee's name, neither the officer who told him to move or any other officer had enforced the five-second rule against him. (*Id.*) On the evening of August 22, after observing law enforcement officers not enforce the five-second rule, Mr. Reinstein discussed the enforcement of the five-second rule with a law enforcement officer, who told him that the police "apparently [were] not going to enforce it," that enforcement of the rule was "completely within [the police's] discretion," and that the police "certainly can arrest [violators] if they don't keep moving." (*Id.* ¶ 11.) The officer did not tell Mr. Reinstein how he would decide whether to make an arrest, but said "I'm not about to arrest you even though you're standing still." (*Id.*)

E. The Inadequacy Of The PAZ

Immediately following the TRO hearing, at which Mr. Koster represented and Ms. Spillars testified that the PAZ had been established, Mr. Doty went to Ferguson to find it. (Doty Decl. ¶¶ 12.) While there, Mr. Doty asked multiple officers where the PAZ was, but they told him that they did not know what area he was referring to. (*Id.* ¶¶ 13-14.) Mr. Doty eventually found a large field near where Attorney General Koster represented there was “three to four acres of open land,” and near where Ms. Spillars had testified the PAZ was located. But that field was fenced in and there was no other discernable PAZ nearby. (*See* TRO Tr. 32:6-18; Doty Decl. ¶ 19.)

The following day, in response to an inquiry, Mr. Doty received an email from someone at the Attorney General’s office that said the alternative protest zone was located at the parking lot across from the field he had identified the night before. (Doty Decl. ¶ 24.) Mr. Doty traveled to the area to observe the parking lot, but it was not marked as a PAZ and contained no protestors. (*Id.* ¶¶ 25-26.) That parking lot belonged to a furniture store, whose owner was standing outside of the store. (*Id.* ¶ 27.) When Mr. Doty asked the owner if his lot was a PAZ, the owner responded that the lot was his private property and that he had not given anyone permission to use it. (*Id.*)

Later that day, Mr. Doty observed Capt. Johnson speaking with the owner, and asked Capt. Johnson if the parking lot was the PAZ. (*Id.* ¶ 29.) Capt. Johnson responded that it *would be*. (*Id.* ¶¶ 30-32 (emphasis added).) Capt. Johnson stated that he hoped to have the PAZ opened by 5:00 *pm that day*, but still had to work out some details. (*Id.* ¶ 33 (emphasis added).) Finally—about 24 hours after the State represented to this Court that the PAZ was already open—the Missouri Highway Patrol issued a “media alert” titled, “New Ferguson Protester Assembly Zone and Media Staging Area,” which noted that “[a]n approved Assembly Zone for

protesters *is being established* at the old Ford dealership building at 9026 West. Florissant Ave.” (*Id.* ¶ 34 & Ex. 2 (emphasis added).) The same press release also announced that the “media staging area,” which had been at the McDonald’s just across the street from the PAZ, was being moved to the Public Storage buildings several blocks away from the PAZ. (Doty Decl. ¶ 35 & Ex. 2)

Even after the PAZ was established, it proved to be an ineffective and unused alternative to “ground zero” for the demonstrators. Law enforcement officers did not direct protestors to this designated area. (Abdullah Decl. ¶ 30; Reinstein Decl. ¶ 15; Doty Decl. ¶ 46). When witnesses visited the PAZ, they found it virtually empty or with just a handful of people. (Doty Decl. ¶ 45, 49; Reinstein Decl. ¶ 14). The vast majority of protestors remained in the area where demonstrators had been congregating. (Abdullah Decl. ¶¶ 32-33; Doty Decl. ¶ 48.) The PAZ was unpopular for multiple reasons. For one, it was outside of the protest area where demonstrators had been congregating. (Doty Decl. ¶ 38 & Ex. 1 (map).) Moreover, because law enforcement had relocated the “media staging area” to the opposite end of the primary protest area, members of the media could not observe protestors in the PAZ from the media staging area and thus protestors had significantly less opportunity to communicate with the media if they chose the PAZ over the traditional protest area. (*Id.*)

III. ARGUMENT

A. Standard for a Preliminary Injunction

In considering a preliminary injunction motion, this Court must determine whether: (a) Plaintiff is likely to prevail on the merits; (b) there exists a threat of irreparable harm to Plaintiff absent the injunction; (c) the harm to Plaintiff outweighs the injury that granting the injunction would inflict upon Defendants; and (d) the preliminary injunction is in the public interest. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). “When a plaintiff has

shown a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied.” *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (internal quotation marks and citation omitted).

B. Plaintiff is Likely to Prevail on the Merits.

Because the “five-second rule” enforced by Defendants was not enacted pursuant to “reasoned democratic processes,” Plaintiff need only show a “fair chance of prevailing” to satisfy *Dataphase’s* first prong. See *Planned Parenthood v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008). Under this standard, Plaintiff is not required to show “a greater than fifty percent likelihood that he will prevail,” *PCTV Gold, Inc. v. SpeedNet, LLC*, 508 F.3d 1137, 1143 (8th Cir. 2007) (quoting *Dataphase Sys., Inc.*, 640 F.2d at 113); he only needs to show that his claims provide “fair ground for litigation.” *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003).

1. The Five-Second Rule Violates the Due Process Clause.

“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). A law is unconstitutionally vague where it “does not provide people with fair notice of when their actions are likely to become unlawful.” *Stahl v. City of St. Louis, Mo.*, 687 F.3d 1038, 1041 (8th Cir. 2012).

The constitutional concerns arising from vague policies that implicate the First Amendment are grave: “they trap the innocent by not providing fair warning”; “they impermissibly delegate basic policy matters to low level officials for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application”; and “a vague policy discourages the exercise of First Amendment freedoms.” *Cohen v. San Bernardino Valley Coll.*, 92 F.3d 968, 972 (9th Cir.1996).

Because the five-second rule interferes with First Amendment rights and threatens arrest, it must have a “greater degree of specificity” than other regulations. *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (“Where a statute’s literal scope . . . is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts.”); *see also Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 872 (1997) (imposing higher standards for vagueness on criminal laws).

The five-second rule falls far short of these standards.

First, it is unclear what the five-second rule prohibits. Plaintiff, in the span of one hour, was told first that he merely could not stand still for more than five seconds, (TRO Tr. at 6:12-14; Abdullah Decl. ¶ 23); later, he was reprimanded for walking back and forth over a considerable distance and told he had to be walking to somewhere, presumably outside the protest area, (TRO Tr. at 7:4-14; Abdullah Decl. ¶ 24). Law enforcement officers communicated yet a third interpretation to Ms. Holbrook, telling her she could not stop at all. (Holbrook Decl. ¶ 9).

Even high-level officials have offered differing explanations of the five-second rule. Ms. Spillars represented to this Court that the policy was intended to cause all protestors to move to the PAZ.⁵ (TRO Tr. at 34:7-10). But the same day Ms. Spillars offered that testimony, Capt. Johnson publicly stated that the policy was merely intended to keep protestors moving. (RJN Ex. D (quoting Capt. Johnson as stating: “Protesting does not need to stand still, it needs to be heard. It needs to move forward,” he added. “So really, the marching around in the circles, we’re

⁵ It is unclear how enforcement of the five-second rule on Monday, August 18, 2014, was intended to accomplish the purpose of redirecting protestors to the PAZ when the PAZ was not open until the evening of Tuesday, August 19, 2014.

keeping our voice moving. I don't want it to stand still.”).⁶ Based on these statements, it is impossible for a citizen to determine whether the five-second rule prohibits being in the “ground zero” protest area entirely, or instead permits demonstrations in the Ferguson protest area so long as the citizen remains in motion.

Second, it is unclear when the rule is in force. Day to day, hour to hour, the rule’s enforcement status appears to change: in force, partially in force, or not in force at all. During the day on Tuesday, August 19, both Ms. Holbrook and Mr. Doty reported that they were subject to some variation of the no standing rule. (Doty Decl. ¶¶ 17-18; Holbrook Decl. ¶ 21.) But by that evening, the “five-second rule” was apparently not being enforced at all—at least until 11:55 p.m. when officers ordered the crowd to disperse and violence erupted. (Abdullah Decl. ¶¶ 36-37.)

Third, it is unclear who is subject to the rule’s uncertain prohibitions. Law enforcement officers have been observed enforcing the five-second rule against certain groups while other groups were allowed to remain standing. (Doty Decl. ¶¶ 18, 28.) Some individuals in plain view of officers were allowed to stand still and engage in conversations in the protest area without being told they faced arrest if they did not move. (*Id.* ¶ 42). Further, the five-second rule was not enforced against Mr. Reinstein until he angered a police officer by attempting to find out the name of a man being arrested, at which point he was told to keep moving. (Reinstein Decl. ¶ 9).

⁶ Amanda Terkel, *Capt. Ron Johnson Defends New Protest Rules in Ferguson: ‘We’re Not Violating Your Rights’*, THE HUFFINGTON POST, Aug. 18, 2014 (RJN Ex. D) (quoting Ron Johnson as saying “We are not going to let groups congregate and build into larger groups because that’s what causes problems. . . . So by allowing them to walk, that’s not going to let the other element blend in and define this group. . . . Protesting does not need to stand still, it needs to be heard. . . . So really, the marching around in the circles, we’re keeping our voices moving. I don’t want to stand still.”)

The unbounded nature of the rule has led citizens to be threatened with arrest for activities that ordinarily would not even border on the unlawful. (*See, e.g.*, Abdullah Decl. ¶ 22-27 (threatened with arrest five times in the span of one hour, including for praying and for stopping to catch his breath); Holbrook Decl. ¶ 11 (threatened with arrest at least six times in the course of a day); Doty Decl. ¶ 41 (observing arrest of woman reportedly for failure to abide by five-second rule)). Officers in Ferguson, granted the discretion to interpret and implement the five-second rule, have applied it in an inconsistent and arbitrary manner. (Doty Decl. ¶ 28; Reinstein Decl. ¶ 9 (being told to keep moving after asking for an arrestee's name); *id.* ¶ 11 (law enforcement officer stating that it is “completely within our discretion” whether to enforce the policy and/or to arrest those who refuse to comply, but also saying he would not arrest declarant “even though [he was] standing still.”).

This inconsistent enforcement of the five-second rule and other dispersal orders has discouraged the exercise of First-Amendment rights. Citizens, including Plaintiff, have been deterred from returning to the protest area for fear of arbitrary arrest. (Abdullah Decl. ¶¶ 28, 40; Reinstein Decl. ¶¶ 12-13.) The haphazard application of the rule has also dissuaded Plaintiff from stopping to ask an officer what the five-second rule prohibits and declarant Holbrook from pausing to help a grieving parent. (Abdullah Decl. ¶¶ 8; Holbrook Decl. ¶ 15.)

The State's interest in “curbing criminal activity ... cannot justify legislation that would otherwise fail to meet constitutional standards for definiteness and clarity.” *Kolender v. Lawson*, 461 U.S. 352, 361 (1983). The evidence moreover confirms that the five-second rule and its haphazard application do not promote peace and order. As explained by James Ginger, an expert on police practices and procedures, there is no evidence that prohibiting protesters from standing still, while permitting them to keep walking, is an effective means of preventing violence.

(Ginger Decl. ¶¶ 10(h), 22). In his over forty years of experience working with police departments and researching law enforcement policies, Mr. Ginger has never come across another law enforcement agency that has employed a tactic similar to the five-second rule. (*Id.* ¶ 23.) This is not surprising. A “disparate, irregular, and arbitrary police response” that places no limits on officer discretion is not only ineffective in preventing violence; it can undermine efforts at maintaining order. (*See id.* ¶ 18). Indeed, the record contains evidence that demonstrations were peaceful while protestors were allowed to stand and congregate and only turned violent when law enforcement aggressively ordered the crowd to disperse. (Abdullah Decl. ¶¶ 37-39.) Finally, Defendants cannot explain how application of the rule in daylight hours to those who, for example, have gathered to pray or to stop to catch their breath can serve the state’s interests.

Accordingly, this Court should enjoin this impermissibly vague policy as a clear violation of the Due Process Clause.

2. The Five-Second Rule Violates Plaintiff’s First Amendment Rights to Freedom of Assembly and Freedom of Speech.

(a) *The Five-Second Rule Gives Overly-Broad Discretion to Officers.*

The discretion afforded law enforcement officers by the five-second rule also renders the rule unconstitutional under the First Amendment. As the Supreme Court has made clear, “even content-neutral time, place, and manner restrictions can be applied in such a manner as to stifle free expression.” *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 323 (2002). Where the official charged with enforcing the policy “enjoys unduly broad discretion” in determining how to apply the policy, “there is a risk that he will favor or disfavor speech based on its content.” *Id.* “[T]he success of a facial challenge on the grounds that an ordinance delegates overly broad discretion to the decisionmaker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing

so.” *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 133 n.10 (1992). To be constitutional under the First Amendment, a regulation must “contain adequate standards to guide the official’s decision.” *Id.*

As an unwritten rule, the five-second rule necessarily violates this requirement by leaving the application of the rule entirely within officers’ discretion. *See, e.g., Niemotko v. State of Md.*, 340 U.S. 268, 271-72 (1951) (striking down policy where there was “no ordinance or statute regulating or prohibiting the use of the park” but instead “an amorphous ‘practice,’ whereby all authority to grant permits for the use of the park is in the Park Commissioner and the City Council” because “[n]o standards appear anywhere; no narrowly drawn limitations; no circumscribing of this absolute power . . .”). As previously established, enforcement of the five-second rule has been at the whim of the individual officer. (Doty Decl. ¶¶ 17-18, 28; Reinstein Decl. ¶¶ 7, 9, 11.) A policy “whose violation may entirely depend upon whether or not a policeman is annoyed” is plainly an unconstitutional infringement on Plaintiff’s First Amendment rights. *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971).

(b) The Five-Second Rule Does Not Further The Asserted Government Interest, Is Not Narrowly Tailored, and Fails To Leave Open Ample Alternative Channels.

Even if the five-second rule afforded due process, was content neutral, and provided adequate standards for law enforcement, it would fail intermediate scrutiny under the time, place, and manner test.

The sidewalks Defendants have targeted are traditional public fora that are “held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *McCullen v. Coakley*, 134 S.Ct. 2518, 2529 (2014) (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009)). As such, “[c]onsistent with the traditionally open character of public streets and

sidewalks, . . . the government’s ability to restrict speech in such locations is ‘very limited.’” *Id.* (quoting *United States v. Grace*, 461 U.S. 171, 177 (1983)). “When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 816 (2000).

To meet its burden for a true time, place, and manner restriction, the government must show that the regulation is content-neutral, narrowly tailored, and leaves open ample alternative channels for communication of information. *McCullen v. Coakley*, 134 S.Ct. 2518, 2529 (2014). Defendants cannot meet that burden here.

First, the policy is not content neutral. In practice, enforcement of the five-second rule has varied based on the identity of the speaker and the content of his speech. Declarant Reinstein was not subject to the five-second rule until he attempted to do his job as a legal observer. (Reinstein Decl. ¶ 9.) And witnesses have seen numerous other occasions in which the five-second rule was enforced against certain groups but not others. (Reinstein Decl. ¶ 7; Doty Decl. ¶18 (perceiving more aggressive enforcement against younger people and people of color).) Courts have recognized that a vague policy such as this one undermines any claim to content neutrality. *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1066 (9th Cir. 2012) *cert. denied*, 134 S. Ct. 70, (U.S. 2013) (“[A] speech restriction cannot satisfy the time, place, manner test if the restriction does not contain clear standards. To identify just one problem, the time, place, and manner test requires content neutrality.”).⁷

⁷ Because the five-second rule is not content neutral, it is subject to strict scrutiny. *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 817 (2000) (internal citation omitted). To meet this heavy burden, “content-based restrictions must be necessary to serve a compelling interest and must be narrowly drawn to achieve that end.” *Gilleo v. City of Ladue*, 986 F.2d 1180, 1183 (8th Cir. 1993), *aff’d*, 512 U.S. 43 (1994). And because Defendants cannot show that the unprecedented five-second rule is the least restrictive alternative for promoting public safety, the (footnote continued)

Second, the policy is not narrowly tailored. A rule is not narrowly tailored if it “burdens substantially more speech than necessary” to achieve the state’s asserted interests. *McCullen v. Coakley*, 134 S.Ct. 2518, 2537 (2014). The five-second rule—which prohibits citizens from standing still for more than five seconds, regardless of whether they are violating a law or posing a threat to public safety—imposes a substantial burden on the exercise of free speech. As Mr. Abdullah has described, the five-second rule prevents him from talking to groups of individuals assembled at once, stopping to ask law enforcement questions including about threats to public safety or even the five-second rule itself, and pausing to do interviews with the press. (Abdullah Decl. ¶ 9; *see also id.* ¶ 19.) Ms. Holbrook reported that the five-second rule prevented her from supporting members of her community and speaking to the media. (Holbrook Decl. ¶¶ 15, 21-22.) Mr. Reinstein believes that the imposition of the five-second rule has directly resulted in less protests because citizens are afraid of being arrested. (Reinstein Decl. ¶ 13.)

This substantial burden is entirely unnecessary to achieve Defendants’ stated objectives of preventing violence. As Plaintiff has described, citizens and community members assembled peacefully multiple times without imposition of the five-second rule. (Abdullah Decl. ¶¶ 15, 33-34.) Indeed, from Plaintiff’s experience, only when the community was confronted with arbitrary, aggressive and unintelligible dispersal orders did any sort of violence occur. (*Id.* ¶¶ 37-39.)

Defendants cannot explain how prohibiting citizens from standing still is an effective means of preventing violence. According to Mr. Ginger, a rule that allows officers to enforce an unwritten policy without clear guidance or adequate supervision is unlikely to create safer

five-second rule cannot withstand strict scrutiny. (*See, e.g.*, Ginger Decl. ¶ 23 (police practices expert stating he has never seen the five-second rule used in his forty years of experience).)

conditions and may even cause a situation to spin “out of control.” (Ginger Decl. ¶ 18.) Even if the five-second rule had been enforced consistently, there is no basis for the contention that protesters who are continuously moving will be less violent than those who remain still for more than a specified period of time. (*Id.* ¶¶ 10(h), 22, 23.)

In any event, even if the rule were somehow useful in promoting safety, broadly applying the rule regardless of the time of day, the location, or the peacefulness of ongoing protests is unnecessary to meet Defendants’ objectives. Criminal activity in the Ferguson protest area has occurred overwhelmingly at night.⁸ And, while Ms. Spillars testified at the TRO hearing that the five-second policy was adopted in response to the threat of a coordinated attack on the command center, the command center is not in the area where the five-second rule has been in force. (TRO Tr. at 30:10-31:11; Doty Decl. ¶¶ 8-9.) Indeed, the PAZ, where Ms. Spillars represented Defendants were attempting to move all of the protesters, is actually significantly closer to the command center than the protest area. (Doty Decl. Ex. 1.)

The substantial burden imposed by the five-second rule on the speech of Plaintiff, other legal observers, demonstrators, and the media is also unnecessary because existing statutes grant law enforcement officers the authority that they need to maintain public safety in the Ferguson protest area. For example, if and when law enforcement observes evidence that a group has formed with the intention of committing an unlawful act through violence or force, they can order the group and those around them to disperse under the State’s unlawful assembly and

⁸ See Michele Munz & Lisa Brown, *After 12 days of unrest in Ferguson, the stress is taking a toll*, ST. LOUIS POST-DISPATCH, Aug. 20, 2014 (RJN Ex. E) (describing violent riots and looting as occurring “late at night”); Matthew Dolan, Pervaiz Shallwani & Ben Kesling, *Strong Police Presence Felt After Night of Violence in Ferguson*, THE WALL STREET JOURNAL ONLINE, Aug. 19, 2014 (RJN Ex. F) (describing calm day after violent night as “pattern that has established itself here over the past week.”); see also (Doty Decl. ¶ 5; Holbrook Decl. ¶ 29).

refusal to disperse laws. *See e.g.* Mo. Ann. Stat. §§ 574.040, 574.060, *amended in non-pertinent part by* 2014 Mo. Legis. Serv. S.B. 491 (statutes prohibiting unlawful assembly and refusal to disperse from the scene of an unlawful assembly); *see also Foti v. City of Menlo Park*, 146 F.3d 629, 642-43 (9th Cir. 1998) (striking down a city ordinance requiring picketers to keep moving and finding that the ordinance “fall[s] short of any reasonable requirement of necessity,” and was not narrowly tailored because “obvious, less burdensome means . . . are readily and currently available by employing traditional legal methods” (internal quotation marks and citation omitted)).

Because the five-second rule does not further a public safety purpose and, in any event, burdens substantially more speech than necessary to serve that purpose, it cannot withstand scrutiny under the time, place, and manner test. *See, e.g., United States v. Grace*, 461 U.S. 171, 181 (1983) (“[T]he section, which totally bans the specified communicative activity on the public sidewalks . . . cannot be justified as a reasonable place restriction primarily because it has an insufficient nexus with any of the public interests . . .”).

Finally, the five-second rule fails to leave open ample alternative channels of communication. “An alternative is not ample if the speaker is not permitted to reach the intended audience.” *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th Cir. 1990) (internal quotation marks and citation omitted).

The PAZ is not a constitutionally sufficient alternative channel of communication.⁹ The PAZ is situated far from the press zone, (Doty Decl. ¶ 38), preventing those in the PAZ from

⁹ The PAZ was not even in existence for the first approximately 30 hours that the five-second rule was in place. (*Compare* Abdullah Decl. ¶ 20 (describing being alerted to five-second rule at around 11:00 a.m. on Monday, August 18) *with* Doty Decl. ¶¶ 12-34 (describing attempt to find PAZ and it being opened only sometime the evening of Tuesday, August 19)).

having their message heard by the media.¹⁰ And Defendants have made little effort to make citizens aware that there is an alternate area where they can demonstrate without having to constantly keep moving. (*Id.* ¶¶ 43, 48; Abdullah Decl. ¶¶ 30, 37; Holbrook Decl. ¶¶ 19, 28; Reinstein Decl. ¶ 15). Witnesses have observed that, as a result of these inadequacies, the PAZ is nearly empty and has not been used as an alternative space for demonstrations. (Reinstein Decl. ¶ 14; Doty Decl. ¶¶ 45, 49).

The protest area is the epicenter of organizing, dialogue, and the community response. It is where the community is, it is where the media is, and—importantly for a protest about the use of force by, and race relations with, law enforcement—it is where law enforcement is. To suggest that protestors may take their voices elsewhere is to miss the point of the protests. As Plaintiff Abdullah has explained:

If I were to go the PAZ, I would not have the ability to communicate with members of the press who are in the area where protestors have congregated, the law enforcement officers who are attempting to maintain order on those sidewalks, or the protestors who are marching on those sidewalks. Put simply, the sidewalks of Ferguson are “ground zero” for the protests; the PAZ is not where the public dialogue is occurring.

(Abdullah Decl. ¶ 11).

In sum, the five-second rule fails the time, place, and manner test because it affords excessive discretion to officers, is content based, burdens substantially more speech than is necessary, fails to advance the asserted government interest, and does not leave open ample alternative channels.

¹⁰ While the press zone was originally close to where the PAZ is now located, the zone was moved to a different, substantially further location *at the same time* that the creation of the PAZ was announced. (Doty Decl. ¶¶ 35, 38 & Ex. 2).

C. The Remaining *Dataphase* Factors Also Favor Issuance of a Preliminary Injunction

Although a showing that a plaintiff is likely to prevail on a First Amendment claim is typically sufficient for the issuance of a preliminary injunction, *Swanson*, 692 F.3d at 870, the other *Dataphase* factors also weigh heavily in favor of granting the preliminary injunction.

Permitting continued enforcement of the rule will cause irreparable harm to Plaintiff. It is settled law that a “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (plurality). While this Court previously noted that the PAZ would likely abate any irreparable harm, further factual development has shown that the PAZ is insufficient to permit the free exercise of First Amendment rights. And, in any event, the availability of the PAZ cannot prevent or remedy the injury caused by Defendants’ due process violations.

Issuance of a preliminary injunction will cause no harm to Defendants. As set forth above, Defendants themselves have only enforced the rule haphazardly, the five-second rule is rarely if ever used by law enforcement in other jurisdictions, and the discretion given to officers by the five-second rule can actually foment tension where, as here, a rule is enforced inconsistently. Moreover, “[t]he balance of equities... generally favors the constitutionally-protected freedom of expression.” *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008).

Finally, the public interest favors issuance of a preliminary injunction. Quite simply, “[i]t is always in the public interest to protect constitutional rights.” *Id.* at 689. Moreover, because the five-second rule undermines public safety—or at a minimum is an ineffective tool for maintaining peace and order—the public’s interest in avoiding violence is not served by the rule that the requested preliminary injunction targets.

IV. CONCLUSION

For the forgoing reasons, this Court should enter a preliminary injunction.

DATED: August 26, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon defendant by placing the same in the First Class mail addressed as set forth below as set forth below on August 27, 2014:

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/s/ Anthony E. Rothert

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,

Plaintiff,

V.

COUNTY OF SAINT LOUIS, MISSOURI,
RONALD K. REPLOGLE, in his official
capacity as Superintendent of the Missouri
Highway Patrol, and JOHN DOES 1-5, in their
individual capacities,

Defendants.

CASE NO. 4:14-cv-1436 CDP

DECLARATION OF MUSTAFA
ABDULLAH IN SUPPORT OF
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION

DECLARATION OF MUSTAFA ABDULLAH

I, Mustafa Abdullah, declare as follows:

1. I am the plaintiff in the above-entitled action. I am over the age of 18. I offer this declaration in support of my motion for a preliminary injunction. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

I. Background And Introduction

2. I am a Program Associate at the American Civil Liberties Union of Missouri Foundation (“ACLU of Missouri”). As a Program Associate, I have a number of responsibilities, including community organizing and legislative advocacy in support of the ACLU of Missouri’s mission. My organizing and advocacy responsibilities involve and depend upon my exercise of my rights under the First Amendment, including my free speech and assembly rights. My job requires me to be both a public advocate for civil liberties and educate Missourians on their rights. In order to do this, I must go to the communities I serve, build relationships with leaders, talk with people on the ground, and ensure that their rights are being protected.

3. Since the protests and demonstrations began in the aftermath of the shooting of Michael Brown, I have visited the neighborhoods in Ferguson, Missouri. My purposes in going to Ferguson included being a legal observer and organizing legal observers in conjunction with Amnesty International and the National Lawyers Guild. The legal observers have monitored the activities of law enforcement officers. Several observers, including myself, also have distributed “know your rights” information to individuals assembled on the Ferguson sidewalks, and have communicated with the protestors, media, and law enforcement officers in Ferguson.

4. I have not committed or encouraged any acts of violence in Ferguson, nor do I intend to do so. Rather, my overall objective in going to Ferguson has been to promote and protect the rights of peaceful demonstrators.

5. As set forth in more detail below, during my visits to Ferguson, Missouri in recent days, my First and Fourteenth Amendment rights have been repeatedly violated by law enforcement officers. In particular, those officers have, at times, applied to me and others a policy that prohibits standing on certain public sidewalks for more than five seconds. (In this declaration, I will refer to this policy as the “five-second rule”.)

6. I have personally observed law enforcement officers apply this five-second rule inconsistently. Although officers have told me that I could not stand in one place for more than five seconds, other observers and I have been allowed to remain stationary much longer than five seconds since the policy has been in force. Moreover, even while I have been walking on the Ferguson sidewalks (and, therefore, not remaining stationary for more than 5 seconds), I have been told that I am in violation of the policy.

7. It remains unclear to me what activity the five-second rule prohibits on the sidewalks of Ferguson. To my knowledge, the five-second rule’s terms are not set forth in a publicly available document. Also, I do not know whether walking back and forth over a distance of 10 feet, 100 feet, or half a mile – even if I do not remain stationary for more than five seconds – is permissible under the policy.

8. Moreover, as I explain below, I am fearful that stopping to ask an officer what the five-second rule does and does not prohibit will result in my arrest for having stopped for more than five seconds to ask the question. The arbitrary and inconsistent enforcement of the five-

second rule that I have personally observed has thus deterred me from speaking with law enforcement officers to learn what conduct the rule prohibits. This uncertainty about what the five-second rule allows and prohibits and about what would happen to me if I attempted to ask what the rule means has made me scared to communicate with others while standing or walking on the sidewalks of Ferguson.

9. Also, the five-second rule – setting aside its inconsistent application – severely burdens my ability to communicate with protestors, the media, and law enforcement in the area. It also places a direct restraint on my ability to peacefully assemble with others on the sidewalks of Ferguson. There is a substantial difference between talking to a group of people who are assembled in one place versus attempting to communicate with a dispersed set of individuals who are constantly moving under the threat of arrest and constant observation by dozens of law enforcement officers. The five-second rule discourages groups of protestors from peacefully assembling, and thus makes it more difficult for me to communicate with multiple people at once. The five-second rule also prevents me from stopping to ask law enforcement officers about legitimate threats to public safety, or from pausing to be interviewed by journalists.

10. In my experience in Ferguson, the five-second rule has not promoted public safety. To the contrary, it has undermined public safety. Before the rule's adoption, I witnessed a peaceful assembly of protestors on the sidewalks of Ferguson at which I was able to share information with protestors on their legal rights. After the rule's adoption, I witnessed officers order a peaceful assembly of people to disperse, which resulted in tensions flaring.

11. The so-called "Protest Assembly Zone" ("PAZ") is not an adequate alternative in terms of my ability to communicate with protestors, officers, and the media on the sidewalks of

Ferguson. In my experience, the people I am interested in communicating with and observing are located on the Ferguson sidewalks and not in the PAZ. If I were to go to the PAZ, I would not have the ability to communicate with members of the press who are in the area where protestors have congregated, the law enforcement officers who are attempting to maintain order on those sidewalks, or the protestors who are marching on those sidewalks. Put simply, the sidewalks of Ferguson are “ground zero” for the protests; the PAZ is not where the public dialogue is occurring. The PAZ is also problematic because it is not adjacent to the area where the media has been concentrated. Remaining in the PAZ therefore would directly undermine my ability to spread my organization’s message through the media.

12. In this declaration, I refer to the “Ferguson protest area” or the “Ferguson demonstration area.” This is not an official zone or area, nor is it subject to a precise definition. Rather, when I use these phrases, I intend to refer to the area in Ferguson where protestors and demonstrators have assembled in the days since the Brown shooting. That area roughly encompasses the sidewalks, streets, and parking lots along West Florissant Avenue between the McDonald’s (located at 9131 West Florissant Avenue) and the QuikTrip gas station (located at 9420 West Florissant). This area should not be confused with the designated PAZ, which is an area near the intersection of Ferguson Avenue and West Florissant Avenue.

II. The Events Of Thursday, August 14

13. On Thursday, August 14, 2014, I went to the Ferguson protest area. This was before the five-second rule was announced and implemented the following Monday, August 18.

14. When I arrived in the Ferguson protest area, I approached a peaceful assembly of people. The group was not acting violently. Although some people were walking about, others

were standing in one place for an extended period of time. There was nothing about those who were standing still that led me to believe that they were any more prone to commit violence than those who were walking.

15. I also observed no indications on August 14 that the ability of demonstrators to peacefully assemble while remaining stationary in one place presented a threat to public safety. To the contrary, the peaceful assembly appeared to me to give protestors an opportunity to voice their concerns in a non-violent and peaceful manner. Although law enforcement officers were present in large numbers on August 14, I witnessed no acts by law enforcement that night that I believed to be improper or arbitrary. Instead, officers were acting reasonably to maintain public safety while allowing demonstrators to peacefully assemble and exercise their First Amendment rights. Based on my observations of events after the five-second rule was put into effect, I believe that prohibiting individuals from remaining stationary while peacefully assembling on the night of August 14, 2014 would have heightened, not reduced, tensions between police and demonstrators and therefore would have undermined public safety.

16. I brought with me to the Ferguson protest area on August 14 about 400 “know your rights” cards created by the ACLU. Exhibit A to this declaration is true and correct copy of the cards that I was distributing in Ferguson. These cards educate people on their rights when encountering law enforcement (such as, when you are stopped on the street, in your car, or when law enforcement asks to search your home), In the process, I was also educating people on their basic free speech rights.

17. During my August 14 visit to Ferguson, I ran out of the “know your rights” cards. In other words, I distributed approximately 400 such cards that evening.

18. I had numerous discussions with African American youth during my August 14 trip to the Ferguson protest area about the issues that were of concern to them and their rights as protestors. The youth shared with me their concerns about their problematic relationship with law enforcement, including concerns about racial profiling and police brutality.

19. My ability to stand still in the Ferguson demonstration area – and the ability of others in that area to do the same – facilitated my ability to communicate with the protestors, learn about their concerns, collect information about police practices, distribute “know your rights” cards, and verbally share information with demonstrators about their civil rights. Because we were able to remain in place, I was able to reach a much larger group of listeners than I have been able to communicate with since the five-second rule has been in effect.

III. The Events Of Monday, August 18

20. On Monday, August 18, 2014 at around 11:00 a.m., I learned through Twitter reports that law enforcement officers in the Ferguson protest area apparently were ordering individuals who were violating no law to refrain from gathering or standing for more than five seconds on public sidewalks. The reports also stated that law enforcement officers were threatening people with arrest for non-compliance with this five-second rule.

21. After learning of these reports, I traveled to the Ferguson protest area to investigate the reports.

22. Once I arrived in the Ferguson protest area, I was personally ordered on five separate occasions to refrain from gathering or standing for more than five seconds on the public

sidewalks of Ferguson. Consistent with the Twitter reports, I also was threatened with arrest for non-compliance.

23. In the first incident, I had just arrived in the Ferguson protest area and I was looking around trying to decide who I would speak with first. While standing there, I was approached by three law enforcement officers. Those officers threatened me with arrest because they said that I had violated a rule that prohibited me from standing in that location for more than five seconds.

24. In the second incident, I was walking – not standing in place – with a journalist from the St. Louis Post-Dispatch. I was approached by law enforcement officers, who asked if I was lost and told me that I should get to where I was going. I responded by explaining that I thought the rule was that I could not be standing in one place for more than five seconds. The officers replied that I should leave and reiterated that I should get to where I was going. To be clear, at the time I was approached in this second incident, I was not standing still. Rather, I had been walking back and forth over a distance of approximately three-tenths of a mile.

25. In the third incident, I stopped walking to catch my breath. I was standing with a small group of protesters. Several officers approached us and said that we had been standing for more than 5 seconds and threatened us with arrest if we failed to comply. Fearful of being arrested, I stepped away and attempted to record the ensuing interaction between law enforcement and the protesters who had been nearby me. The officers instructed the protestors that they had to keep moving.

26. In the fourth incident, I stopped to pray with a pastor. Law enforcement officers threatened me with arrest for standing still while I prayed with the pastor. Attached as Exhibit C

to the declaration of Jo Holbrook is a video that I have viewed. That exhibit accurately depicts this fourth incident from the point where we were approached by the officers.

27. In the fifth incident, I saw Reverend Jesse Jackson exit a car in the McDonald's parking lot. There was a group of people who gathered around Rev. Jackson. I approached Rev. Jackson to talk with him. We were then approached by a group of officers who told the crowd to disperse. I asked the officers why they believed they had the authority to issue such an order while the group was assembled on private property (the McDonald's parking lot). One of the law enforcement officers responded to my question by instructing me to leave the area.

28. Because I feared that I would be arrested if I continued to remain in the Ferguson protest area – regardless of whether I was standing, walking, praying, or communicating with a high-profile public figure on private property – I decided to leave the Ferguson protest area. If I had not been repeatedly threatened with arrest for supposedly violating the five-second rule, I would have remained in the Ferguson demonstration area and would have continued communicating with protestors and members of the media.

29. During my time in Ferguson on August 18, I found that the enforcement of the five-second rule directly burdened my ability to communicate with others in the protest area. For one, it precluded me from standing with and communicating with groups of people. The requirement that individuals constantly be in motion appeared to deter protestors from assembling in groups. To the extent I was able to engage individuals who were walking in one-on-one conversations, I could not reach as many people as I could talk to when they were assembled in groups. Additionally, I constantly had in the back of my mind that I faced the risk of being arrested for walking back and forth in the protest area – an act that some law

enforcement officers apparently thought was a violation of the five-second rule, notwithstanding that continuously walking back and forth is not standing still for five seconds. The five-second rule also precluded me from stopping to have conversations with law enforcement officers. I wanted to serve as a bridge between those officers and demonstrators by, for example, sharing reasonable public safety concerns that I would learn from the officers with the protestors whom I was interacting with. But to perform this function, I needed to stop and talk with the law enforcement officers. I understood the five-second rule to prohibit me from doing so.

30. During my visit to Ferguson on August 18, I was not told by law enforcement officers or anyone else that the PAZ had been established or that one would be created shortly.

31. After visiting Ferguson on August 18, my attorneys filed a verified complaint and a request for a temporary restraining order (“TRO”) on my behalf seeking to prevent law enforcement officials from enforcing the five-second rule on the public sidewalks of Ferguson. I testified before this Court on the afternoon of August 18 at the TRO hearing. I have reviewed my testimony at the TRO hearing, a transcript of which is attached as Exhibit B. I reaffirm the testimony that I gave at that hearing subject to one point that, upon further reflection, I believe I had incorrectly recalled at the hearing. That one point is that the incident in which I had stopped to catch my breath occurred before, not after, the incident in which I had been praying with the pastor.

IV. The Events Of Tuesday, August 19

32. On the evening of August 19, I decided to return to the Ferguson protest area to monitor law enforcement activity, to meet legal monitors from Amnesty International, and to accompany friends who intended to participate in the protests.

33. On that night, I arrived at the QuikTrip in the Ferguson demonstration area at approximately 10:30 p.m. I went there, rather than the designated PAZ (which I then knew about), because the vast majority of protestors and law enforcement officials had gathered in the Ferguson protest area. In other words, the activities that I thought were most important to monitor, and the majority of individuals that I wanted to communicate with, were not in the PAZ. After arriving, I walked from the QuikTrip to the McDonald's. On the way, I stopped several times to take pictures, mostly of law enforcement. After I reached the McDonald's, I stood in the McDonald's parking lot for an extended period of time talking with friends and monitoring the police. I then walked from the McDonald's parking lot to the adjacent private parking lot where a store named "Crystal Nails" is located (at 9187 West Florissant Avenue). While there, I mostly stood in the front area of the parking lot and on the sidewalk immediately in front of the store, speaking with friends, Amnesty International Volunteers, and legal observers.

34. From when I arrived at the Ferguson protest area at 10:30 p.m. until approximately 11:50 p.m., there were a lot of people assembled in the Ferguson protest area. Many of the individuals in this group were standing still for periods of much longer than five seconds. I saw law enforcement officials observing the group that included people standing in place, but they did not instruct anyone who was standing still to keep walking, or threaten them with arrest for their apparent violation of the five-second rule. During that time, I also stood in the Ferguson protest area for periods significantly exceeding five seconds. Although law enforcement officers appeared to be observing my actions, during this period I was not instructed to keep walking or threatened with arrest for violating the five-second rule. I am six feet, ten

inches tall. I mention that because it would have been very easy for officers to observe me standing still in the group of people that I was within.

35. I was surprised that others and I were allowed to stand in the same place for more than five seconds in the Ferguson protest area during that time. It appeared to me that this was inconsistent with the five-second rule that I had been subjected to the previous day. But consistent with my experience the prior Thursday, August 14 – when the five-second rule had neither been adopted nor enforced – I saw no indication that the ability of people to stand in one place threatened public safety. Instead, it appeared to foster peaceful protest.

36. In that time, I also witnessed groups marching back and forth within a short distance within the protest area. This too seemed to be inconsistent with the rule that had been applied to me the prior afternoon when I had attempted to walk back and forth on the public sidewalk down a section of Florissant Avenue.

37. At approximately 11:55 p.m., violence erupted when police ordered the assembled group to disperse. At about that time, a law enforcement officer approached the group with a megaphone. He instructed the group to move off of the sidewalk and to leave. The officer with the megaphone stated something that was muffled and incomprehensible. He turned his body towards the direction of the PAZ, but I did not hear any clear instruction or observe any clear sign that the group was supposed to move towards the PAZ.

38. Some of the protestors that were standing nearby grew frustrated and asked the officers where we were supposed to go and told the officers that their order was unconstitutional. I was standing near the Amnesty International and NLG legal observers, Phillip Agnew (Executive Director of Dream Defenders), Talib Kweli (a political activist and musician), and the

Peace Poets (an activist hip-hop group). The law enforcement officers responded by raising their batons and guns, pointing them at us, and ordering us to raise our hands.

39. It was at that point – just after law enforcement officers ordered the crowd to disperse and pointed their weapons at peaceful protestors – that a bottle was thrown from someone in the crowd in the direction of the officers. At that point, others around me began to run. Fearing for my safety, I began to run as well in the direction of my vehicle, which was parked at the Greater St. Mark Family Church. To get to the church, I needed to cross the Maline Creek bridge on West Florissant Avenue. When I arrived at the bridge, however, law enforcement officers had formed a line that blocked my route across the bridge. The officers ordered me and others around me to drop to the pavement. As I lay on the pavement, I witnessed law enforcement officers violently tackle three young African-American men.

40. I was sufficiently shaken up by the events that I witnessed on the night of Tuesday, August 19 that I did not return to the Ferguson protest area on Wednesday or Thursday (August 20 or 21) to communicate with protestors about their civil rights, to interact with the media, or to discuss public safety issues with law enforcement officers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of August, 2014.

By: /s/ Mustafa Abdullah
MUSTAFA ABDULLAH

EXHIBIT A

What to Do If You Are Stopped by Police, Immigration or FBI Agents

A Practical Guide from the ACLU of Missouri



***Stay calm.** Don't run. Don't argue, resist or obstruct the officer even if you are innocent or your rights are being violated. Keep your hands where the officer can see them.

***Ask if you are free to leave.** If the officer says yes, calmly and silently walk away. If you are under arrest, you have a right to know why.

***You have the right to remain silent** and cannot be punished for refusing to answer questions. If you wish to remain silent, tell the officer out loud.

*** Ask if you are required to identify yourself** if instructed to do so. Local laws may require you to identify yourself.

***You do not have to consent to a search** of yourself or your belongings, but an officer may "pat down" your clothing if they suspect a weapon. You should not

physically resist, but you have the right to refuse consent for any further search.

If You Are Stopped in Your Car

***Stay calm.** Stop the car in a safe place as quickly as possible. Turn off the car, turn on the internal light, open the window part way and place your hands on the wheel.

***Upon request, show your driver's license, registration and proof of insurance.**

***If an officer asks to look inside your car,** you can refuse to consent to the search. But if an officer believes your car contains evidence, your car can be searched without your consent.

***Both drivers and passengers have the right to remain silent.** If you are a passenger, you can ask if you are free to leave. If the officer says yes, sit silently or calmly leave.

Because Freedom Can't Protect Itself

Kansas City Office
3601 Main Street
Kansas City, MO 64111
(816) 470-9933

St. Louis Office
454 Whittier Street
St. Louis, MO 63108
(314) 652-3114

Intake Line:
(314) 652-3111

File a Complaint:
www.aclu-mo.org/intake

www.aclu-mo.org

If Police, Immigration or FBI Agents Come to Your Home

- *You do not have to let them in unless they have certain kinds of warrants.
- *Ask the officer to slip the warrant under the door or hold it up to the window so you can inspect it.
- A **search warrant** allows an officer to enter the address listed on the warrant, but officers can only search for the items listed in the location listed.
- An **arrest warrant** allows an officer to enter the home of the person listed on the warrant if they believe the person is inside.
- A **warrant of removal** or deportation (ICE warrant) does not allow officers to enter a home without consent.

*Even if the officers have a warrant, you have the right to remain silent. If you choose to speak to the officers, step outside and close the door.

If You Are Contacted by the FBI

- *If an FBI agent comes to your home or workplace, you do not have to answer any questions. Tell the agent you want to speak to a lawyer first.
- *If you are asked to meet with an FBI agent for an interview, you have the right to say you do not want to be interviewed. If you agree to an interview, have a lawyer present. You do not have to answer any questions you feel uncomfortable answering, and can choose to only answer questions on certain topics.

If You Are Questioned about Your Immigration Status

*You have the right to remain silent and do not have to discuss your immigration or citizenship status with police, immigration agents, or any other officials. You do not have to answer

questions about where you were born, whether you are a U.S. citizen, or how you entered the country.

*If you are not a U.S. citizen and an immigration agent requests your immigration papers, you must show them if you have them with you. If you are over 18, carry your immigration documents with you at all times. If you do not have immigration papers, say you want to remain silent.

*Do not lie about your citizenship status or provide fake documents.

If You Are Arrested



- *Do not resist arrest, even if you believe the arrest is unfair.
- *Say you wish to remain silent and ask for a lawyer immediately. Don't give any explanations or excuses. If you can't afford a lawyer, one will be provided.

If You Are Given a Court Date

- *Remember, you have the right to an attorney and one must be provided to you free of charge if you are facing jail time.
- *Ask the judge if you can be released without bail on bond or have the bail lowered.

This guide is meant to serve as basic instruction when interacting with police officers, FBI and immigration agents.

This is not legal advice. Be sure to consult a lawyer.

EXHIBIT B

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,)
)
Plaintiff,)
)
vs.) No. 4:14-CV-1436 CDP
)
COUNTY OF ST. LOUIS, MO,)
et al.,)
)
Defendants.)

TRANSCRIPT OF TEMPORARY RESTRAINING ORDER HEARING

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

August 18, 2014

APPEARANCES:

For Plaintiff: Mr. Anthony E. Rothert
Mr. Grant R. Doty
AMERICAN CIVIL LIBERTIES UNION OF
MISSOURI FOUNDATION
454 Whittier Street
St. Louis, MO 63108

For Defendants: Mr. Chris Koster
MISSOURI ATTORNEY GENERAL'S OFFICE
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102

Mr. Robert H. Grant
ST. LOUIS COUNTY COUNSELOR'S OFFICE
41 S. Central
St. Louis, MO 63105

REPORTED BY: SUSAN R. MORAN, RMR, FCRR
Official Court Reporter
111 South 10th Street
St. Louis, MO 63102
(314) 244-7983

1 bit of evidence, tiny bit of testimony.

2 THE COURT: Okay. You may do so.

3 MR. ROTHERT: Okay. I'd call Mustafa Abdullah.

4 THE COURT: Sir, would you step over here to be
5 sworn. Go ahead.

6 MUSTAFA ABDULLAH,
7 Having been first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. ROTHERT:

11 Q. Mr. Abdullah, did you have occasion today to go to the
12 city of Ferguson?

13 A. I did.

14 Q. Where in the city of Ferguson did you go?

15 A. I was near the intersection of Ferguson and Florissant.

16 Q. All right. And what was your purpose for going there
17 today?

18 A. My purpose was -- I had heard that there were issues,
19 complaints that people were having with not being able to
20 protest. So I went to inquire about those and to ask the
21 people that had been there, you know, what their experience
22 was and if they were having problems protesting, and if so
23 what.

24 Q. And when you were speaking to people, how many people
25 would you say you spoke to while you were out there?

1 A. Probably -- probably 15 or 20 people, yeah.

2 Q. And were those journalists and members of the public
3 both?

4 A. Yes, both.

5 Q. Okay. And did you run into any trouble yourself while
6 you were out there trying to gather these stories?

7 A. Yes. Five times, yeah.

8 Q. Okay. And what happened five times?

9 A. Well --

10 Q. Let's start the first time. What happened the first
11 time?

12 A. So the first time I was told by several officers that I
13 could not be standing on the sidewalk for more than five
14 seconds.

15 Q. And did they say what would happen if you stood on the
16 sidewalk for more than five seconds?

17 A. Yeah, that I would be arrested.

18 Q. And what were you doing on the sidewalk?

19 A. I think at the time I was talking to somebody.

20 Q. And did that happen -- what did you do after you were
21 told that you could stand for more than five seconds on the
22 sidewalk?

23 A. I started walking.

24 Q. Okay. Did you continue to talk to people while
25 walking?

1 A. Yes.

2 Q. Did you have any more encounters with police officers?

3 A. Yes, I did.

4 Q. Okay. What happened?

5 A. I was walking back and forth over several blocks sort
6 of between the -- opposite the QT and the McDonald's. I was,
7 you know, walking and talking with folks. And I -- basically
8 the same set of officers who came up to me and said, you
9 know, are you lost, where are you going, sort of insinuating
10 that I was again violating their rules.

11 Q. Did you explain to them what you were doing?

12 A. I was just walking and conversing. And I thought the
13 rule was that I shouldn't be standing for more than five
14 seconds on the sidewalk, so I was confused.

15 Q. Were you threatened with arrest again?

16 A. Yes.

17 Q. How many times were you threatened with arrest while
18 you were out there?

19 A. I was threatened with arrest five times.

20 Q. All right. Did you witness other people being
21 likewise -- who were on the sidewalk likewise being
22 threatened with arrest?

23 A. Yes.

24 Q. And as far as you could see, were they violating any
25 laws?

1 A. No.

2 Q. And this was over a how many block area?

3 A. Probably about four, five blocks.

4 Q. And did you ever enter into a street?

5 A. No.

6 THE COURT: You must have -- you had to cross a
7 street, didn't you, to go four or five blocks?

8 THE WITNESS: No, I was staying on the sidewalk on
9 the same -- the sidewalk that's on the side of the
10 McDonald's, I was staying on that sidewalk. I mean, there's
11 no streets that are cutting off the sidewalk, I mean, I'm
12 just estimating. It's a far distance that the sidewalk
13 continues from the McDonald's down to the area that's
14 opposite the QT.

15 THE COURT: Yeah, so there are no cross streets that
16 you were --

17 THE WITNESS: Correct. Sorry, yes.

18 BY MR. ROTHERT:

19 Q. There are cross streets on the other side of West
20 Florissant Road -- Avenue?

21 A. I think so. Yeah, I think so.

22 THE COURT: Okay. I got it. When he said he was
23 four or five blocks, that sounded like he must have gone from
24 one block to another block, but he's saying no. Okay.

25 Q. At your last -- the last time you encountered the

1 police, where were you?

2 A. On the McDonald's parking lot.

3 Q. And were you alone?

4 A. No, I was with a group of people. Actually had -- was
5 in the process of taking a picture with Reverend Jessie
6 Jackson.

7 Q. Okay. And then what happened?

8 A. We were approached by a group of officers, I would say
9 a dozen. I mean, there were a group of people that were
10 standing around us as well. And they threatened us with
11 arrest if we didn't start moving and going about our way.

12 Q. And was anyone blocking traffic?

13 A. No, it was all inside the McDonald's parking lot.

14 Q. Did you take or do you have any recordings with you
15 here today of encounters --

16 A. Yes.

17 Q. -- this morning?

18 A. Yes.

19 Q. Okay. And is this a true and accurate recording of
20 what you saw of another person talking to a police officer
21 about the situation?

22 A. Yes.

23 MR. GRANT: Well, I'm going to object at this point.
24 In order to lay the proper foundation he either has to
25 testify that he took these recordings or that he was

1 observing. I don't know who took the recordings.

2 THE COURT: Yeah, we need that foundation. I agree.

3 BY MR. ROTHERT:

4 Q. Did you observe what is in this recording?

5 A. Yes.

6 Q. And did you take it yourself?

7 A. I did not.

8 Q. Who took it?

9 A. Iris, I'm forgetting her last name. But, yeah, so I
10 was standing next to the person who was taking the video,
11 recording the video.

12 Q. And after you -- and you have viewed this video?

13 A. Yes, I have it on my phone.

14 Q. And does it accurately depict what you saw and heard
15 when you were standing there?

16 A. Yes.

17 THE COURT: Okay. I'm going to allow it. How long
18 is this?

19 MR. ROTHERT: Thirty seconds, a minute, or less.

20 THE COURT: You may play it. We're going to call
21 this Plaintiff's Exhibit A.

22 MR. ROTHERT: Yes.

23 THE COURT: And you'll need to make a record of this
24 and have a record of exactly what you're playing in court. I
25 don't see a CD or disk or anything around here, but we make

1 records in this court.

2 MR. ROTHERT: Yes, Your Honor. Well, we tried to
3 make disks, but they appear not to have worked. But we will
4 make a disk.

5 THE COURT: Okay. So this is Plaintiff's Exhibit A.
6 I'm receiving it for purposes of this hearing only. Go ahead
7 and play it.

8 MR. ROTHERT: Yes.

9 (Video played.)

10 BY MR. ROTHERT:

11 Q. Is that an accurate depiction of what occurred that you
12 saw?

13 A. Yes.

14 Q. And were your own interactions with police officers
15 less dramatic than that or --

16 A. A little bit less dramatic. I didn't talk with them as
17 much. The conversation wasn't as long, it was more brief, so
18 a little bit less dramatic.

19 Q. And were you worried you would be arrested if you
20 continued to talk to people on the sidewalk about what was
21 happening?

22 A. Yes. Yes.

23 Q. And is that the reason you left when you did?

24 A. Yes.

25 Q. Okay. And are you fearful about going back to get

1 stories and information about what's happening?

2 A. Yeah. Yes.

3 MR. ROTHERT: I have no further questions of this
4 witness.

5 THE COURT: Do you wish to cross-examine?

6 MR. GRANT: Yes, Your Honor.

7 THE COURT: Why don't you step up to the lectern
8 too.

9 Now, I think a lot of the arguments here are going
10 to be legal arguments, but I'd like to let the plaintiff make
11 the record, and I'll hear any cross-examination you wish.
12 Mr. Grant.

13 MR. GRANT: And preliminarily, Your Honor, I have
14 had no opportunity to speak with Attorney General Koster, so
15 as to order of questioning --

16 THE COURT: I'm taking you first because you're
17 present.

18 MR. GRANT: Because I'm here, okay.

19 THE COURT: And Attorney General Koster, I assume
20 you're not offended by that?

21 MR. KOSTER: I'm not offended, Your Honor, that's
22 fine.

23 MR. GRANT: Thank you.

24 CROSS-EXAMINATION

25 BY MR. GRANT:

1 Q. First of all, sir, were you in the video at all? Did
2 you appear in that video? Because I thought you said you
3 stood next to the person who took the video.

4 A. Yes. So I did not appear in the video, I don't think.
5 But initially I was standing next to her, and then I started
6 to walk away when we were initially being threatened with
7 arrest. I was not seeking to get arrested.

8 Q. So if I understand you correctly, how long were you
9 next to her while she was videoing that?

10 A. Maybe 30 seconds.

11 Q. All right. But you think -- and your testimony is that
12 you saw the whole incident?

13 A. Yes. Yeah, I was -- yeah. Yes.

14 Q. Where were you then while the incident was being
15 filmed?

16 A. Well, so for the initial 30 seconds or so I was
17 standing with them as the officers had approached us. And
18 made it very clear that we couldn't be congregating on the
19 sidewalk. And I had also -- you know, a threat to arrest had
20 been made. You know, this was the -- I think the third time
21 that the officers, the same officers had seen me and
22 approached me. So I was walking away after that initial 30
23 seconds. I stepped back and I continued to walk back towards
24 the McDonald's at that time.

25 Q. Okay. Could you go through -- first of all, are you

1 employed by the ACLU?

2 A. Correct.

3 Q. And when you say you got complaints, where did you
4 receive these complaints?

5 A. We saw them on Twitter. I mean, it was people that
6 were reporting that they were having issues with protesting.

7 Q. And what is your employment with the ACLU, what are
8 your functions?

9 A. So my title is program associate. Essentially I do
10 advocacy work for the ACLU.

11 Q. And what does that mean?

12 A. That means doing local organizing in the community. It
13 also means going and doing lobbying work on the State
14 legislature. It sort of covers the whole gambit.

15 Q. Was the person that was filming this, was she part of
16 the ACLU?

17 A. No, she's not.

18 Q. And what was her name?

19 A. Her name was Iris. I believe it's Iris, yeah.

20 Q. Do you know her personally?

21 A. Just met her this morning.

22 Q. And you met her, I take it, at the scene of the filming
23 or did you meet her before?

24 A. I met her earlier this morning at our office.

25 Q. At her office?

1 A. At our ACLU office.

2 Q. At your offices. So she came to your office at what
3 time?

4 A. It was maybe nine-ish or ten-ish. It was in the
5 morning, yeah.

6 Q. And why did she come to your office?

7 A. She was having a meeting at our office.

8 Q. What kind of meeting?

9 A. I'm not sure what was the subject of the meeting.

10 Q. But she doesn't work for the ACLU, but she was coming
11 to your offices to have a meeting?

12 A. Yes, sir.

13 Q. But you don't know what kind of meeting?

14 A. No, sir. I was not present at the meeting. I didn't
15 know anything about it.

16 Q. All right. Then when did you meet her, if you weren't
17 in the meeting?

18 A. I met her because she had asked for coffee when she
19 came in, and I happily helped get her some coffee. That was
20 my initial interaction of meeting her.

21 Q. And while you're getting coffee or right thereafter she
22 says what in order to get you to -- well, tell me what she
23 said to you. Why the two --

24 A. Basically the conversation was, you know, welcome to
25 the ACLU, can I get you some water, some coffee, and she

1 said, yeah, I would love some coffee. And I went to get her
2 coffee. And they were going to start the meeting shortly,
3 and then I left and I went back to my office.

4 Q. But she didn't come to the ACLU for coffee, she came
5 there for some purpose, right?

6 A. Yeah, she came to have a meeting. And I'm not -- and I
7 don't know what the meeting was about.

8 Q. And then do you accompany her after the meeting to the
9 Ferguson area?

10 A. No.

11 THE COURT: So how was it that you came to be
12 standing next to her when she's filming at this event?

13 THE WITNESS: So she had called me. Someone from
14 the office I imagine gave her my cell phone number. And she
15 wanted to come out to the protest. And she was just
16 connecting with me. And then that's when the interaction
17 happened on the sidewalk shortly thereafter.

18 THE COURT: She called you while you were already
19 out there?

20 THE WITNESS: Uh-huh.

21 THE COURT: And said what, I'm coming over, let's
22 meet?

23 THE WITNESS: Yeah, she was just asking how things
24 were going, and she wanted to meet up with me at where I was
25 at.

1 THE COURT: Sorry. Go ahead, Mr. Grant.

2 MR. GRANT: That's fine, Judge.

3 BY MR. GRANT:

4 Q. Did you discuss with her before you went there that the
5 purpose for which she was going to Ferguson?

6 A. No. No.

7 Q. With respect to the recording that we just witnessed,
8 at some point the police officers are saying, if I understood
9 them, and it was hard to understand them, that in that
10 particular zone they were concerned about the safety of
11 people. Did you hear that?

12 A. I did hear that.

13 Q. And did you hear any details about what their concerns
14 of safety were?

15 A. No. At that point -- I mean, I heard that from the
16 video. But at that point I had walked away and I was not
17 privy to the details of the conversation at the time. So --
18 but it's not clear from the video what the concerns were.

19 Q. Well, from your other experiences, because you had five
20 experiences, --

21 A. Yeah.

22 Q. -- did officers explain to you why they were concerned
23 about the safety of you and other people in that area or in
24 those five areas?

25 A. No.

1 Q. Did you ask them?

2 A. No.

3 Q. And I don't want to be general, I want to be as
4 specific as possible, but not take an inordinate amount of
5 time. In the five instances that you had encounters with the
6 police officers, let's take No. 1, how many people were
7 assembled in addition to yourself?

8 A. No one.

9 Q. So the first time you were the only person, you were
10 standing on the sidewalk in a stationary position --

11 A. Yeah.

12 Q. -- and the police officer told you to move?

13 A. Correct. If my memory is correct, it was three
14 officers who approached me at that time.

15 Q. You were just standing there?

16 A. I was just standing there.

17 Q. And no one else was there?

18 A. No one else was immediately around me, no.

19 Q. By the way, did you take any recordings of these
20 incidents?

21 A. I do have a couple of recordings, but they are not good
22 recordings. So --

23 Q. They are on your phone?

24 A. They are on my phone. And it wasn't -- yeah, I don't
25 have any recordings of immediate interactions with officers.

1 Q. What do you have recordings of?

2 A. I have recordings of the scene and just sort of what
3 was going on and officers interacting with other persons, I
4 was recording it from a distance. But it's not so audible
5 from the video.

6 Q. And are those recordings of each of the five encounters
7 you had with the police officers about the same time and the
8 location?

9 A. I mean, they were all within -- I mean, I was there
10 from about 12 until 1 p.m. or so.

11 Q. In your Verified Petition you talk about five different
12 instances --

13 A. Correct.

14 Q. -- that you had encounters, and I'm trying to determine
15 whether the recordings that you took were taken at the same
16 time and place as those incidents that you allege in your
17 Petition.

18 A. No.

19 Q. So when were the recordings --

20 A. Well, there was one recording. I think there's one
21 recording that I have for 15 or 16 seconds at the very
22 initial interaction. But unfortunately my recording was cut
23 off because I got a call. So, I mean, that was -- that's the
24 one 15-, 16-second recording that I have. But it's not
25 substantive because it was interfered with because I received

1 a call on my cell phone.

2 Q. And that was preceding the times that you had
3 encounters with the police officers where your allegations in
4 the Petition --

5 A. That was immediately preceding I believe -- I can't
6 remember, I think it was either the third or fourth time. It
7 was -- yeah, it was right at the beginning of the
8 interaction. And then it was cut off, the recording was cut
9 off, so it's sort of useless.

10 Q. Let me step back. When did you arrive in Ferguson
11 today?

12 A. About noon.

13 Q. All right. And when did the encounters with the police
14 officers occur?

15 A. They occurred between noon and 1 p.m., because I left
16 basically immediately after the last interaction.

17 Q. Which would have been about 1 p.m.?

18 A. Correct.

19 Q. And the recording that we saw, when did that occur,
20 Exhibit A?

21 A. That may have occurred around 12:35 or 12:40.

22 Q. We covered encounter one. Encounter two, were there
23 other people involved when you were being told by the police
24 officers to disperse?

25 A. There was one other person that I was walking with at

1 the time.

2 Q. And who was that?

3 A. It was a reporter from the Post-Dispatch, and I'm
4 blanking out on her name.

5 Q. It was a female?

6 A. Yes.

7 Q. Okay. What race?

8 A. She was white.

9 Q. And did she hear the officer give a direction to
10 disperse?

11 A. Yes. Well, the interaction was, I had been walking
12 with her sort of back and forth between the public storage
13 business that's there and then the sidewalk that's just
14 opposite the QT. I had been walking that with her maybe
15 three or four times backwards and forwards and then the same
16 group of three officers, and there was an additional officer
17 I believe at that time came up to me and said, you can't be
18 walking back and forth, you know, get to where you're going,
19 are you lost? So that was the --

20 Q. I'm sorry, I thought in the Petition you were saying
21 that you were not allowed to stay stationary. But I guess
22 you're expanding that to say that you were told that you
23 couldn't walk in the same place?

24 A. Yes. That's what they were telling me the second time,
25 yes.

1 Q. So even though you were moving, you were ordered to
2 move to a different place, was that it?

3 A. Yes. They were telling me -- basically they told me I
4 needed to get to where I was going. They were insinuating I
5 was to leave.

6 Q. Did they direct you to a particular place?

7 A. No.

8 Q. Okay. Incident No. 3, were you with anybody else at
9 that time?

10 A. Yes, I was.

11 Q. And how many people?

12 A. It was three of us. It was the video that's depicted
13 in here.

14 Q. The video is Incident No. 3?

15 A. Yes.

16 Q. All right. So you have the person who took the video
17 and who else?

18 A. Her pastor was with us. That was referenced in the
19 video that the pastor was --

20 Q. What is his or her name?

21 A. I'm blanking out on the pastor's name.

22 Q. Was it a male or female?

23 A. It's a male.

24 Q. And what race?

25 A. African American.

1 Q. And I would assume that they heard the police officers'
2 directions also?

3 A. Correct, yes.

4 Q. And Incident No. 4, was anyone with you there?

5 A. Yes. The fourth incident -- so the fourth incident was
6 officers that had approached a group of people, I can't
7 remember how many people it was, and then just ordered them
8 to disperse. Yeah, so that was in front of -- it's a little
9 like strip mall with a couple of stores. It's in between the
10 McDonald's and the QT. So but, yes, I was a part of that
11 group, and we were told to disperse and threatened with
12 arrest if we didn't comply.

13 Q. Do you know who those people were?

14 A. No, total strangers.

15 Q. And how many total?

16 A. It could have been 10 or 12, yeah.

17 Q. And were you directed to a particular place by the
18 officers?

19 A. Not at any time, no.

20 Q. So the direction was to just disperse?

21 A. So the direction was that we couldn't be standing for
22 more than five seconds.

23 Q. But there was no direction to go to a particular place?

24 A. No, sir.

25 Q. Okay. And Incident No. 5, how many people were with

1 you at that time?

2 A. There may have been 15 or 20 people in the parking lot
3 at McDonald's. And I was standing with Reverend Jessie
4 Jackson just shaking his hand and getting ready to take a
5 picture with him when a group of officers, maybe it was -- it
6 was at least a dozen officers I think approached us and said,
7 you know, we had to keep on moving, ordered us to disperse,
8 and also threatened with arrest.

9 Q. And other than Reverend Jessie Jackson, do you know any
10 other people that were in that group?

11 A. I believe that Iris was outside in the parking lot at
12 that time. And I had just informally at that time met a
13 couple of people, you know.

14 Q. Do you remember any names?

15 A. Not at this time. Yeah.

16 Q. At the incident in the parking lot was there any
17 activity that was going on with the crowd? Were they
18 chanting? Was there any yelling at the police that you were
19 aware of?

20 A. No. I mean, the main attraction was Reverend Jessie
21 Jackson. He had just gotten out of a car and he was drawing
22 a crowd. You know, there was people from the sidewalk and
23 people from inside the McDonald's that came out to greet him
24 and to take pictures.

25 Q. At any time did the police officers in Incidents 1

1 through 5, were there any arrests effected that you know of?

2 A. No, sir.

3 Q. Were there any incidents where the officers touched any
4 of the persons who were told to move on?

5 A. No, sir. No.

6 Q. And obviously there was then no handcuffing or
7 restraining of anyone?

8 A. No, sir.

9 Q. Were there any instances that you saw where there
10 were -- we did see the video of No. 3, but were there any
11 instances of people other than that yelling at the officers?

12 A. Not that -- not that I was privy to or that I remember,
13 no.

14 Q. And to be specific, that would be Incidents 1, 2 --

15 A. Correct.

16 Q. -- 4 and 5?

17 A. Correct.

18 MR. GRANT: Your Honor, at this time I have no
19 further questions.

20 THE COURT: Mr. Koster, do you have any questions?

21 MR. KOSTER: Very quickly, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. KOSTER:

24 Q. Would you repeat your name for me just so that I make
25 sure I have it clearly, sir?

1 A. Yes, it's Mustafa Abdullah.

2 Q. And, Mr. Abdullah, what time did this interaction take
3 place that you took the video of?

4 A. I believe it was about 12:35 or so.

5 Q. Are you aware, sir, that at some time prior to
6 2:30 p.m. today, St. Louis County Police Department announced
7 the establishment of an alternative protest zone at the
8 corner of West Florissant Avenue and Ferguson Avenue? Are
9 you aware that that occurred right about that time, sir?

10 A. No.

11 Q. Do you know -- it sounds like you know the area pretty
12 well. The McDonald's that you were referencing earlier in
13 your comment where you had some of this interaction, are you
14 aware that that McDonald's is about 220 feet from the
15 alternate protest zone at West Florissant and Ferguson
16 Avenue, about 220 feet away?

17 A. I'm not sure what -- how many feet it is.

18 Q. If I asserted to you that there was set up an alternate
19 protest zone about 220 feet east of the place where you had
20 the interaction this morning, and there was ample space there
21 for protesters to gather even in the thousands, three to
22 four acres of open land there where emergency personnel were
23 placing -- were asking people to protest, any reason that you
24 know of that individuals could not express their First
25 Amendment rights in that area?

1 A. I was -- I'm just not privy to that. I was not aware
2 of that at all.

3 Q. Okay.

4 MR. KOSTER: I have nothing further. Thank you for
5 your time.

6 THE COURT: Ms. Spillars, I neglected to make a
7 note, are you representing the same party that Mr. Koster is
8 representing?

9 MS. SPILLARS: Yes, Your Honor. I'm actually the
10 Deputy Director and General Counsel for the Department of
11 Public Safety.

12 THE COURT: Okay. Thank you. I thought so. I
13 assume you don't need to ask any questions?

14 MR. KOSTER: Your Honor, I would ask to put her on
15 as a witness if you have time.

16 THE COURT: Okay. Hold on a second and we'll see.
17 Anything further of this witness, Mr. Rothert?

18 REDIRECT EXAMINATION

19 BY MR. ROTHERT:

20 Q. Two followup questions based on the cross-examination.
21 Did the other people that you spoke with on the sidewalk have
22 similar experiences?

23 A. Yes.

24 Q. And are you aware of after you left of people being
25 arrested for being on the sidewalk?

1 A. Yes, I did hear about that.

2 THE COURT: All right. You may step down.

3 And, Mr. Rothert, let me remind you of the -- you
4 filed this lawsuit. I'm not sure what time of day you filed
5 it, but your client has now testified clearly that he has
6 taken videos and has recordings that are relevant. You
7 understand the duty to preserve. He understands the duty to
8 preserve. You've cautioned him to make sure he preserves
9 those. They are discoverable and everybody is entitled to
10 them. Right?

11 MR. ROTHERT: Yes, Your Honor.

12 THE COURT: And I could have asked him this, but
13 I'll ask you this. Is Mr. Abdullah the same person that
14 filed the separate lawsuit for a Temporary Restraining Order
15 last Friday?

16 MR. ROTHERT: That was Mustafa Hussein.

17 THE COURT: Okay. I didn't look up the file again.
18 I remember something similar about the names. He is not the
19 same person?

20 MR. ROTHERT: No, just a coincidence.

21 THE COURT: Okay. All right. So does the plaintiff
22 have any other evidence?

23 MR. ROTHERT: Plaintiff has no further evidence.

24 THE COURT: Okay. Mr. Koster, I will allow you to
25 present Ms. Spillars briefly as a witness.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,

Plaintiff,

v.

COUNTY OF SAINT LOUIS, MISSOURI,
RONALD K. REPLOGLE, in his official
capacity as Superintendent of the Missouri
Highway Patrol, and JOHN DOES 1-5, in their
individual capacities,

Defendants.

NO. 4:14-cv-1436 CDP

DECLARATION OF GRANT R. DOTY IN
SUPPORT OF PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION

I, Grant R. Doty, declare as follows:

1) I am over the age of 18 and legally competent to make a declaration and do so on the basis of personal knowledge.

2) I am currently a staff attorney at the American Civil Liberties Union of Missouri ("ACLU-MO") and have been in this position since October 2010.

3) Since the shooting of Michael Brown on August 9, 2014, I have been in Ferguson nine separate times as an ACLU-MO observer (August 14, 15, 17, 18, 19 [twice], 21, 23, and 25, 2014). I have been to Ferguson both during days and nights. I have never actively participated in any protest activities.

4) Based on my observations, I have prepared a map of the area of Ferguson in which the events described in this declaration took place. This map marks the main protest area, the two media staging areas, the Protester Assembly Zone, and the Target where the police command center has been stationed. The map is attached as Exhibit 1.

5) In all my time in Ferguson I never observed aggressive behavior during daylight hours.

6) While a vast majority of the nighttime protesters (I estimate over 99%) I saw during all my visits to Ferguson were non-aggressive, I did see aggressive behavior at night on Monday, August 18, 2014, starting at approximately 10 p.m.

7) I was present at the hearing on Plaintiff's motion for a temporary restraining order ("TRO") on August 18, 2014.

8) During that hearing I heard Ms. Andrea Spillars, the Deputy Director and General Counsel for the Missouri Department of Public Safety, testify that law enforcement had described "an attempt to overrun the unified command center, which is located in the Target parking lot." TRO Hearing Transcript at 31, lines 3-4 (See also Ex. 1). This was offered as a reason for the implementation of the five-second rule.

9) The Target parking lot that Ms. Spillars described is not in the area where the five-second rule has been in place. It is over a quarter of a mile further south on W Florissant Avenue. (See Ex. 1)

10) During that hearing I also heard the Attorney General inform the Plaintiff during cross examination that "some time prior to 2:30 p.m. [on August 18, 2014, after Plaintiff had departed Ferguson in response to the five-second no-stopping policy at issue], St. Louis County Police Department announced the establishment of an alternative protest zone at the corner of West Florissant Avenue and Ferguson Avenue." (See also TRO Hearing Transcript at p. 26, lines 5-8). He also "asserted" that in the "protest zone... there was ample space there for protesters to gather even in the thousands, three to four acres of open land... where emergency personnel

were placing -- were asking people to protest.” (*See also* TRO Hearing Transcript at p. 29, lines 18-23).

11) Later the Attorney General called a witness, Ms. Andrea Spillars, who testified that although “hav[ing] not actually been there” the no-walking protest zone was located in “a parking lot,” and affirmed that it was “three to four acres in size.” (*See also* TRO Hearing Transcript at p. 32, lines 6-18).

12) That night, after the hearing, I went to Ferguson to find the “alternative protest zone.” I arrived in Ferguson shortly after 8:30 p.m.

13) When I arrived near the corner of W. Florissant Avenue and Ferguson Avenue, I was stopped by a law enforcement officer. I asked where the “alternative protest zone” was located. The officer said he did not know what I was talking about and asked me to park in the nearby press area just south of the McDonalds. (*See Ex. 1*).

14) After parking as requested, I exited my car and walked back to the corner of W. Florissant and Ferguson Avenue. I asked two additional law enforcement officers where the alternative protest zone was located. Both officers told me they did not know what I was talking about.

15) Although W. Florissant Avenue was blocked off by police cars starting at Ferguson Avenue, at no time did I observe a sign nor was I verbally informed that I was crossing into a no-stopping zone. I based my understanding of this zone from what the Plaintiff had told me and what I learned in the TRO hearing earlier that day.

16) I walked north on W. Florissant to observe the operation of the must-walk zone described by the Plaintiff and discussed during the TRO Hearing. I walked approximately 0.6 miles to the intersection of W. Florissant Avenue and Highmont Drive. I then returned back to

the corner of W. Florissant Avenue and Ferguson Avenue. The round trip took approximately 45 minutes to an hour.

17) During this walk, I was told by law enforcement officers during two interactions during which I stopped briefly (perhaps seconds) to take pictures that I must keep walking. The officers who directed me to keep moving were polite. Other times I stopped to take pictures (for seconds) or talk with some of the protesters (for a minute or more) about what they thought of the changes (e.g., new curfew, the five second rule, etc.) and nobody told me to keep moving.

18) The enforcement of the five second rule seemed arbitrary to me. Based on my initial observations, the rule appeared to be enforced more aggressively against people of color and younger people regardless of color (I am 48 years old and white). However, I also observed the rule occasionally being enforced against older people and whites (including me - see *supra* ¶ 16). I ultimately concluded that the way the rule was enforced was largely dependent on which law enforcement officer was enforcing it.

19) Upon returning to the corner of W. Florissant Avenue and Ferguson Avenue, I continued to look for the alternative protest zone. I found a large open area on the west side of W. Florissant Avenue and south side of Ferguson Avenue that matched the description of “ample space there for protesters to gather even in the thousands, three to four acres of open land” that the Attorney General described to the Plaintiff during the hearing. (See also TRO Hearing Transcript at p. 26, lines 18-25). This area was, however, enclosed by a locked chain-link fence.

20) I photographed this inaccessible area and asked two law enforcement officers if it was the alternate free speech area. One officer shrugged his shoulders. Another ordered me to return to the press area, and I did so immediately.

21) From the vantage point of the credentialed press area, I looked south down W. Florissant for an alternative where the alternative free speech zone was said to be located. Because the police line extended across W. Florissant Avenue, right at the intersection of Ferguson Avenue, no protesters could move south to any other location, including the parking lot at 9026 West Florissant that would be announced as the “Protester Assembly Zone” the next day. (See Ex. 1).

22) On the night of August 18, which was my fourth visit to Ferguson that week, and the first after the implementation of the five-second-rule, I observed a level of tension that I had not seen in my previous visits to Ferguson. I spoke with several protesters who expressed their unhappiness at having to keep moving, which strongly suggested to me that the tension I observed was caused at least in part by the newly implemented rule.

23) I departed Ferguson sometime after 10:30 p.m.

24) The next morning, August 19, I notified the Attorney General’s office that the large area that the Attorney General had described at the TRO hearing had been locked the night before. I was told they would look into it. Later, I received an email from someone in the Attorney General’s office saying that the alternate protest zone “is at the old Ford dealership at 9026 West Florissant,” across the street from the area I had observed the night before.

25) I returned to Ferguson that day at approximately 2:15 p.m.

26) The field referenced by the Attorney General remained locked, and neither the field nor the parking lot at 9026 West Florissant was marked as an alternate speech zone nor occupied by anyone.

27) I spoke to the owner of the furniture store located at 9026 West Florissant. He stated that he had not given anybody permission to use his parking lot and was not familiar with any plans for it to be used as an assembly point for protestors.

28) At this point I entered the no stopping area and like the night before, the enforcement of the five second rule seemed arbitrary to me. Most of the groups I saw were marching in a large circle from QT (located at the intersection of W. Florissant Avenue and Northwoods Estates Drive) to the McDonalds (at the intersection of W. Florissant Avenue and Ferguson Avenue). (Ex. 1). However, perhaps because it was daytime I saw more people remain stationary for periods significantly longer than five seconds. I saw no arrests and could discern no particular pattern in the enforcement which reinforced my assessment from the evening before that the way it was being enforced was dependent on who the law enforcement officer was.

29) Sometime later I observed a number of law enforcement vehicles near the parking lot at 9026 West Florissant. When I walked there, I saw that Captain Ron Johnson of the Missouri Highway Patrol had arrived and was speaking to the owner. I observed the conversation from a distance.

30) At the end of the conversation, I spoke to Captain Johnson and asked if the parking lot was now going to be the free speech zone.

31) Captain Johnson responded that it would be.

32) I then asked when it was going to be set up and if there would be signage.

33) He responded that he hoped it would be open by 5 p.m. and that he needed to get back to his command post to work out the details.

34) After I returned to my office, the Missouri Highway Patrol issued a Media Alert titled, “New Ferguson Protester Assembly Zone and Media Staging Area.” Ex. 2 (press release). That alert noted that, “[a]n approved Assembly Zone for protesters is being established at the old Ford dealership building located at 9026 West. Florissant Ave.” *Id.*

35) That same Media Alert announced the moving of the “media staging area [from the corner of W. Florissant and Ferguson Avenues to] the Public Storage buildings, located at 9261 West Florissant Ave.” *Id.* (See also Ex. 1).

36) After seeing the press release regarding the “Protester Assembly Zone,” I again went to Ferguson (August 19, 2013) to observe it.

37) When I arrived shortly after 6:30 p.m., I went to the newly created and designated “Protester Assembly Zone” (hereinafter “PAZ”) and it was empty. It was marked with an illuminated construction sign stating “Approve [sic] Assembly Area.” (Ex. 1).

38) The PAZ was nowhere near the 3-4 acres that the Attorney General had asserted. It was outside the main area in which people had been protesting. Had the media staging area not moved, the PAZ would have been partially visible from, and within 300 feet of, it. With the move that same day, the media staging area was 0.3 miles from the speech zone and not visible from it. Additionally, unlike the area where protests had been held, the PAZ had no port-o-potties or trash cans. (Ex. 1).

39) After leaving the empty PAZ shortly after first arriving, I entered the no-standing area and walked back and forth for approximately two hours.

40) Enforcement of the five-second rule was arbitrary. At one point, between 7:00 and 7:30 p.m., I was on the phone and walking in small circles, but I was told along with others in my proximity to “keep moving.”

41) Shortly after this, I saw the arrest of an African American woman near the corner of W. Florissant and Ferguson Avenues. After the rush of law enforcement officers, I approached the area and asked a bystander what had happened. I was told that she failed to move when ordered to do so.

42) Later that evening I observed a number of lengthy conversations (one lasting three minutes) between individuals in which law enforcement officers were within feet and did not warn the participants or observers (including me) that they needed to keep moving.

43) Finally, I never heard any enforcement officials tell me, or others, that we could assemble in the PAZ.

44) I returned again to Ferguson on August 21, 2014.

45) The first place I went (at approximately 6:45 p.m.) was the PAZ. When I arrived there were 4-10 people within it.

46) I spoke to a number of people in the PAZ and asked them why they were there. They said they were tired of walking. I asked if any law enforcement officials had directed them to the PAZ and they responded that they had found it on their own. I asked them what complaints they had of the PAZ and they commented about the absence of port-o-potties (they relieved themselves near the back end of the PAZ) and the fact that it was far from the walking protesters and press.

47) Again, I went into the walking zone to observe.

48) As previously, enforcement of the five-second rule was arbitrary. Most people continued to walk in a loop from the QT to the McDonalds, but a larger number of people remained stationary and did not appear to be told to keep moving. Others were told to keep

moving. Nobody with whom I spoke told me that they were informed of the PAZ from any law enforcement official.

49) Just prior to departing Ferguson I returned to the PAZ and observed only one person remaining there.

50) I departed at shortly after 9 p.m.

51) I again went to Ferguson on Saturday, August 23, 2014, to observe the NAACP Youth March.

52) During this daytime visit I saw many people remain stationary. I saw a voter registration table, a vendor selling food, volunteers sitting near coolers and passing out water, and scores of people sitting and standing still along the street watching the March. At no time during this visit was I told to keep moving nor did I see or hear anyone else be told that they had to keep moving.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26th day of August, 2014.

By: _____

GRANT R. DOTY

EXHIBIT 1

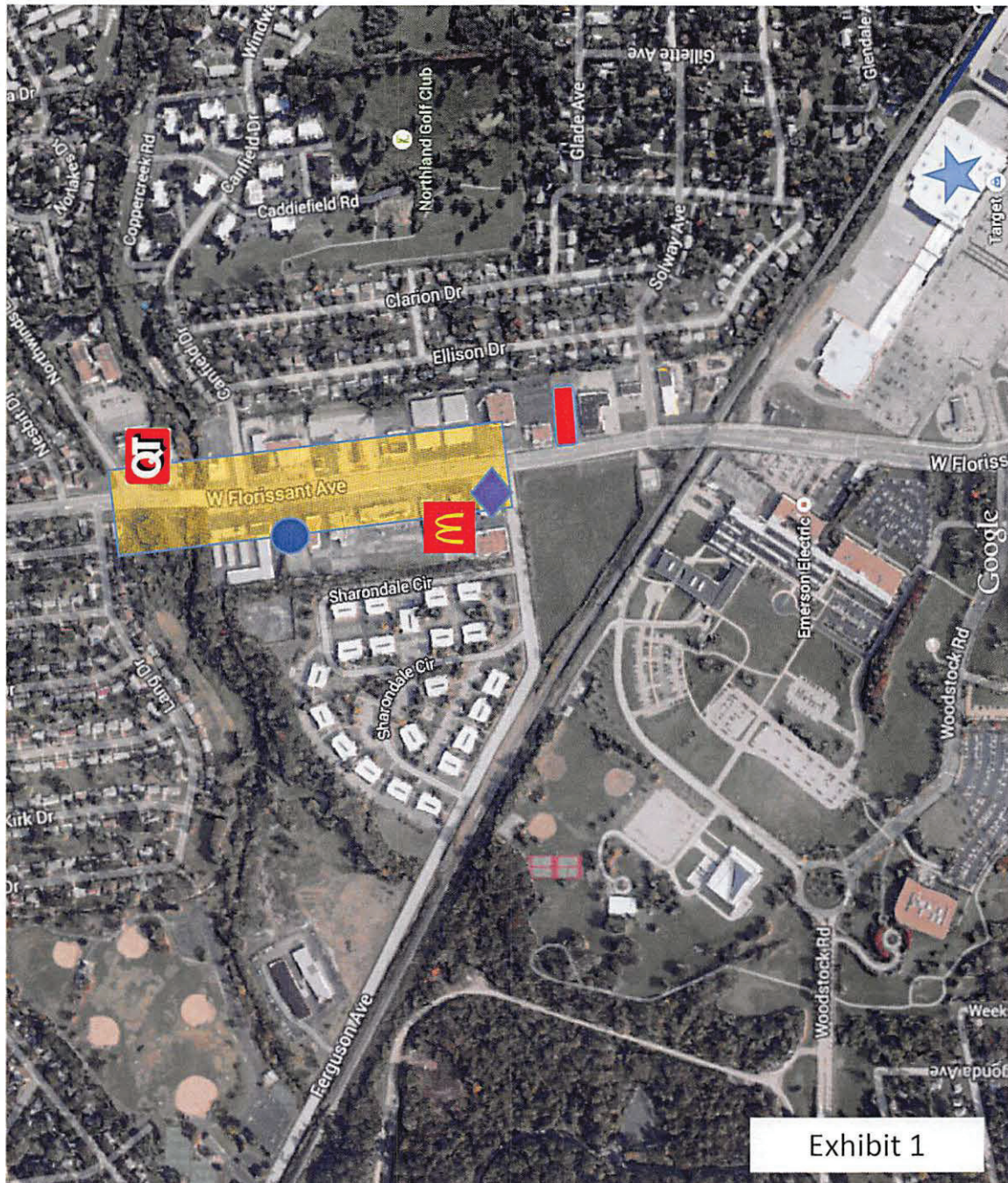


Exhibit 1

EXHIBIT 2

New Ferguson Protester Assembly Zone and Media Staging Area

MISSOURI STATE HIGHWAY PATROL
a division of the
DEPARTMENT OF PUBLIC SAFETY

TROOP C HEADQUARTERS
891 Technology Drive
Weldon Spring, MO 63304

MEDIA ALERT

For further information please contact: Sergeant Al Nothum or Corporal Juston Wheatley
(636) 300-2800

August 19, 2014

EMPHASIS: New Ferguson Protester Assembly Zone and Media Staging Area

An approved Assembly Zone for protesters is being established at the old Ford dealership building located at 9026 West. Florissant Ave.

Also a new media staging area is being established at the Public Storage buildings, located at 9261 West Florissant Ave,

Also, West Florissant will be closed to through traffic within the hour. As always, please be prepared to show media credentials for access.

(###)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,

Plaintiff,

v.

COUNTY OF SAINT LOUIS, MISSOURI,
RONALD K. REPLOGLE, in his official
capacity as Superintendent of the Missouri
Highway Patrol, and JOHN DOES 1-5, in their
individual capacities,

Defendants.

CASE NO. 4:14-cv-1436 [CDP]

DECLARATION OF JO HOLBROOK IN
SUPPORT OF PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION

DECLARATION OF JO HOLBROOK

I, Jo Holbrook, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am currently a house wife, and I live in Orlando, FL. I grew up in the Florissant-Ferguson area in Missouri and lived there for thirty-three years. For the past eight years, after I moved, I have frequently returned to the Florissant-Ferguson area.

3. I consider myself a member of the Florissant-Ferguson community.

4. On Sunday, August 17, 2014, around dusk, I went to the area between the QuikTrip and McDonalds on West Florissant (the "protest area").

5. I went there to have my voice heard, to be part of my community, to help support and heal my community, and to tell the media a side of the story that I felt was not being reported accurately, namely about all of the good people and good acts being done in Ferguson.

6. On Sunday, August 17, 2014, I observed a large number of people and a large number of police officers in the protest area. No one was instructing the community members to keep walking or that they could not stand still.

7. I did not hear any officer or any other person discuss the establishment of a different area for protest, or a Protester Assembly Zone ("PAZ").

8. On Monday, August 18, 2014, I returned to the protest area around 10:30 am. At this time, there were no police cars blocking traffic or clearly marking the protest area.

9. However, as soon as I stepped in front of the QuikTrip, I was aggressively approached by several officers and told that I had to keep moving or I would be arrested.

10. The officers did not explain where this rule came from or why I had to keep moving.

11. I was at the protest area from about 10:30 am to 5:30 pm. During this time, I was threatened with arrest at least six times if I did not keep moving. The entire seven hours I was there, I was consistently told I had to keep moving. I was not told that I could stand still for five seconds. I was told that I always had to keep moving.

12. I observed the police telling other protesters they could not stand in one place as well. I observed a group of protesters being waved along when they were attempting to hold up signs to communicate to passing traffic. I videotaped this encounter, and while I was videotaping two police officers approached me and told me I had to keep moving. A true and correct copy of this videotape is attached as Exhibit A.

13. I also observed two gentlemen being arrested by St. Louis County police officers. The two men appeared to be doing nothing more than standing next to the McDonalds, in front of another local business. They were not being disruptive in any way. Although the first gentleman was arrested before I could begin filming, I managed to videotape the arrest of one of the two gentleman, and a true and correct copy of this videotape is attached as Exhibit B.

14. I also witnessed many others being threatened with arrest if they did not keep moving. In particular, I witnessed officers threaten to arrest Mustafa Abdullah, who I met for the first time that day, solely for his failure to keep moving. I videotaped the encounter between Mustafa and the police. A true and correct copy of the videotape is attached as Exhibit C.

15. I also witnessed a woman of about 60-years of age crying on the streets. I wanted to comfort the woman or to ask her what was wrong, but I was afraid that if I stopped to support or counsel this woman, I would be arrested for violating the "keep walking" rule. I did not see

anyone else stop to speak with or comfort the woman. I later learned that this woman's child had died due to police violence roughly fifteen years earlier.

16. The rule to keep moving hurt my ability to express myself.

17. I couldn't be heard while I was being herded.

18. I could not stop and comfort my community members, and I could not stay and gather with them as a group.

19. At no point on Monday, August 18, 2014, did I hear any police officer, official or any other person speak about a PAZ.

20. I returned to the protest area on Tuesday, August 19, 2014, in the afternoon. I stayed for only about thirty minutes.

21. During that time, I was approached by a female reporter from Cincinnati. I do not currently recall her name. The reporter began asking me questions, but we were cut off when a police vehicle with four officers approached us. The officers told us that we could not stand for the interview and that we had to keep moving.

22. The interruption of the interview and the requirement that we keep moving hurt my ability to communicate to the press and the press' ability to communicate with me. The reporter could not write down the answers to her questions, and it was significantly more difficult to conduct the interview.

23. At no point during my time in the protest area on Tuesday was I told about a PAZ. No officer told me or the reporter that there might be an alternative area where we could peacefully conduct an interview.

24. I returned to the protest area on Saturday, August 23, 2014, at around 12:30 pm.

25. I saw family members gathered together, individuals standing around and barbecuing, and other groups holding prayer circles.

26. No one was forcing these individuals to keep moving. However, no one stated that the “keep walking” rule had been repealed.

27. The activities I saw on Saturday, August 23, 2014, were, to me, great examples of peaceful assembly and expression. The barbecues and prayer circles could not have happened if the “keep walking” rule was being enforced at that time.

28. No one mentioned or discussed a PAZ on Saturday, August 23, 2014.

29. In all my time in the Ferguson protest area, I never observed violence by community members during daylight hours.

30. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26th day of August, 2014.

By: 

JO HOLBROOK

Exhibit A

Video recording made by Jo Holbrook
in Ferguson, Missouri on August 18, 2014

(Video is on concurrently filed disk, file titled “Holbrook Exhibit A”)

Exhibit B

Video recording made by Jo Holbrook
in Ferguson, Missouri on August 18, 2014

(Video is on concurrently filed disk, file titled “Holbrook Exhibit B”)

Exhibit C

Video recording made by Jo Holbrook
in Ferguson, Missouri on August 18, 2014

(Video is on concurrently filed disk, file titled “Holbrook Exhibit C”)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,

Plaintiff,

V.

COUNTY OF SAINT LOUIS, MISSOURI,
RONALD K. REPLOGLE, in his official
capacity as Superintendent of the Missouri
Highway Patrol, and JOHN DOES 1-5, in their
individual capacities,

Defendants.

CASE NO. 4:14-cv-1436

DECLARATION OF JOEL REINSTEIN IN
SUPPORT OF PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION

DECLARATION OF JOEL REINSTEIN

I, Joel Reinstein, declare as follows:

1. I am over the age of eighteen and competent to make this declaration. I have personal knowledge of the facts set forth in this declaration and could and would testify competently if called as a witness.

2. I am a volunteer legal observer for the National Lawyers Guild. As a legal observer, my role is to observe and to document police officers' actions during protests and demonstrations through notes, photographs, and videos. I then gather the evidence that I collect and submit it to the National Lawyers Guild. As far as I know, the National Lawyers Guild may use the evidence I collect to defend protesters who have been arrested or to file law suits against police officers.

3. Legal observers are trained by the National Lawyers Guild not to intervene in the protests in any way, not to provide any advice or instructions to the protesters, and to comply with all orders given by police officers. I have followed these instructions during the entire time I have been observing the protests in Ferguson, Missouri.

4. Sometime during the week of August 11, 2014, the National Lawyers Guild put out a call for volunteers to observe the protests and demonstrations that have taken place in Ferguson after the shooting of Michael Brown. I came to Ferguson from my home in Michigan on Friday, August 15, to volunteer.

5. I have attended the protests every day since I came to Ferguson, except on Tuesday, August 19. I usually arrive in the area that has been designated for protests and

demonstrations around West Florissant ("the protest area") between 8:30 and 9 pm and stay until approximately 2 am.

6. While I was in the protest area on the evening of Monday, August 18, I began to notice police officers instructing protesters that they could not stand still and that they had to keep moving. The police officers continued to enforce this rule from Monday through Thursday evening, but it appeared to me that they were not enforcing the rule consistently.

7. For example, while I was in the protest area on Monday evening, a large group of people marched south down West Florissant to the McDonalds and Family Dollar stores. They stood in that spot for a long time. I overheard some police officers say something along the lines of, "We'll let them wait, we'll let them go for now." After the group had been standing for about an hour or an hour and a half, the police officers told them that they had to keep moving. But I have also seen many other situations when the police officers have immediately told much smaller groups of people or even one or two people standing alone that they had to keep moving.

8. I have had police officers enforce this rule against me and tell me to keep moving several times.

9. From what I have seen while I was in the protest area, it appears that police officers are more likely to enforce the rule and to do so more quickly when a person is doing something the police officers do not like, such as recording the police or trying to get information. For example, on Thursday night, I witnessed an arrest taking place in front of the Family Dollar store. I tried to get the name of the person being arrested so that the National Lawyers Guild could provide him with legal support if he needed it. When I asked the man for his name, another police officer in the vicinity told me to keep moving. The officer did not seem

to care that I was standing still before I asked for the man's name, but as soon as I started to ask for information, he told me that I had to keep moving.

10. When I went to the protest area on the evening of Friday, August 22, the police officers did not seem to be enforcing the rule against anyone. I asked one of the police officers about the rule. I am not sure which law enforcement agency the officer worked for. He was wearing a tan uniform and I thought he was one of the officers for the County of St. Louis. His name badge said "Dolly."

11. I asked the officer if they are still enforcing the rule. He told me, "That's the protocol we've been given tonight, but apparently we're not going to enforce it." I then asked him if the police would arrest people who did not follow orders to keep moving. The officer replied, "That's completely within our discretion, but we certainly can arrest them if they don't keep moving." The officer did not tell me how he would decide whether to make an arrest. He just said, "I'm not about to arrest you even though you're standing still."

12. Every time I have gone to the protest area since the police officers began to enforce this rule, I felt like I was risking being arrested just by being in the area. I did not have a clear idea of what I had to do to avoid arrest. I believed that the only way I could be sure that I would not accidentally violate some rule was by not coming to the protest area at all.

13. I have gotten a strong impression from my overall experiences in the protest area that the rule, the lack of clarity, and the risk of arrest have had a very demoralizing effect on the protesters. There have been far fewer people coming to the protest area every night, people tend to leave earlier, and the people seems to have less energy. The people who continue to come to

the protest area are just walking around. I believe the rule has hampered people's ability to continue their demonstrations.

14. I visited what the police officers are calling the "Approved Assembly Area" a couple of times during the week of August 18. Every time I have gone there, the area has been virtually empty and there is a very bright light shining directly onto the area from across the street. For example, I went to the Approved Assembly Area on Friday evening around 10 pm and there were only five people there. None of them was engaging in any demonstrations. They were just sitting on the ground and resting.

15. I do not believe that the Approved Assembly Area gives people an adequate alternative to continue their demonstrations. It is far away from the main area where the protests have taken place. More importantly, there are simply not enough people in the area for any demonstrations to be effective there. I have never seen anyone using the area as a place for demonstrations. I have also never heard any police officers inform people that there is an Approved Assembly Area where they can go to demonstrate.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 25th day of August, 2014.

By: 
JOEL REINSTEIN

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,

Plaintiff,

V.

COUNTY OF SAINT LOUIS, MISSOURI,
RONALD K. REPLOGLE, in his official
capacity as Superintendent of the Missouri
Highway Patrol, and JOHN DOES 1-5, in their
individual capacities,

Defendants.

CASE NO. 4:14-cv-1436 CDP

DECLARATION OF JAMES D. GINGER
IN SUPPORT OF PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION

DECLARATION OF JAMES D. GINGER

I, James D. Ginger, Jr., declare as follows:

1. My name is James Donald Ginger, Jr., Ph.D. My permanent residence is at 6877 Francis Marion Road, Pamplico, South Carolina. I am over 21 years of age, and I am of sound mind, and qualified to give this report. I have never been convicted of a crime that would disqualify me from providing this report, and this report is made on my personal knowledge, based on a review of documents related to the events of this case.

I. Background and Information

2. I am currently employed as CEO of Public Management Resources, a public-sector research and development firm specializing in policing and police practices. Offices for Public Management Resources are located in Pamplico, South Carolina. I have been so employed since 1992. I have served as a sworn law enforcement officer in Evansville, Indiana (from 1969 to 1977), and as the director of the Research and Development Unit of the San Antonio Police Department. I have also served as the director of the Southern Police Institute at the University of Louisville (Kentucky), and as deputy director of the Police Foundation in Washington, D.C. From 1992 to 2001, I taught criminal justice at St. Mary's University in San Antonio Texas, where I also served as director of the Center for Justice Policy. I hold academic degrees in sociology (University of Evansville, BA, 1973), law enforcement (University of Evansville, BS, 1975), justice administration (University of Evansville, MS, 1977), and public administration (Virginia Polytechnic Institute and State University, PhD, 1984).

3. I have served the Federal District Court for the District of New Jersey as the monitor of a consent decree entered into by the State of New Jersey and the United

States Department of Justice. In that capacity, I advised the court, from 1999 through 2008, regarding New Jersey State Police activities related to compliance with items articulated in the consent decree, including, in addition to other aspects, use for force, arrest, search and seizure, policy development and implementation, training, discipline, investigation of citizens' complaints, and issues related to racial profiling by the police.

4. I have also served the Federal District Court for the Western District of Pennsylvania as the auditor of a consent decree entered into by the City of Pittsburgh and the United States Department of Justice. In that capacity, I have advised the court, from 1997 through 2005, regarding the Pittsburgh Bureau of Police and the Pittsburgh Office of Municipal Investigation's activities related to compliance with items articulated in the consent decree, including, in addition to other aspects, use for force, arrest, search and seizure, policy development and implementation, training, discipline, investigation of citizens' complaints, and issues related to racial profiling by the police.

5. I was retained in 2001 by the City of Los Angeles and the United States Department of Justice to develop auditing and monitoring methodologies for implementation of the consent decree entered into by the City of Los Angeles and the Department of Justice. Practices that were the subject of that decree included police use of force, arrests, search and seizure, policy development and implementation, discipline, investigation of citizens' complaints, and racial profiling by the police.

6. To date, I have managed more than six million dollars in grants and contracts with police agencies including the San Antonio Police Department, the Dallas Police Department, the Miami (Florida) Police Department, The Port Authority Police of New York and New Jersey, the Atlanta (Georgia) Police Department, the Tampa

(Florida) Police Department, the Yale University Police Department, and others. I have written two police operations manuals (Evansville, Indiana, 1975, and San Antonio, Texas, 1985) and have reviewed and critiqued dozens of other manuals guiding the delivery of police services. I have been designated an expert in police practices in state and federal courts in Texas, Indiana, Kentucky, Louisiana, New Mexico, Arizona, New Jersey, California, and Pennsylvania. I have published more than 50 articles, book chapters, monographs, and technical reports concerning police practices in the United States, including more than 30 technical reports filed with the federal district courts in New Jersey and the Western District of Pennsylvania. My curriculum vita, attached as Exhibit A, identifies additional experience and education that qualifies me to develop opinions in the matter of *Abdullah v. County of St. Louis, et al.* My rate of compensation for litigation support in this matter is \$200 per hour.

7. In preparation for developing opinions in the matter of *Abdullah v. County of St. Louis, et al.*, I have reviewed the following documents and artifacts:

- a. Plaintiff's Verified Complaint in *Abdullah v. County of St. Louis, et al.*;
- b. Transcript of Temporary Restraining Order hearing in *Abdullah v. County of St. Louis, et al.* on August 18, 2014, before the Hon. Catherine D. Perry;
- c. Declaration of Plaintiff Mustafa Abdullah, submitted in support of Plaintiff's motion for a preliminary injunction;
- d. Declaration of Grant Doty, submitted in support of Plaintiff's motion for a preliminary injunction;
- e. Declaration of Joel Reinstein, submitted in support of Plaintiff's motion for a preliminary injunction; and
- f. Declaration of Jo Holbrook, submitted in support of Plaintiff's motion for a preliminary injunction.

8. In forming the opinions presented in this report, I relied on more than 40 years of specialized experience, training, and knowledge of police practices described fully in attached curriculum vita, and in Paragraphs 2 through 6 of this report, including my time as a sworn law enforcement officer, my experience writing two operations manuals for law enforcement agencies (the Evansville, Indiana Police Department in the 1970s and the San Antonio Police Department in the 1980s), empirical reviews of police use of force polices in numerous states, and the professional audit of police operations and practices of police agencies throughout the United States, including provision of audit and monitoring services for Federal District Courts in Pennsylvania and New Jersey.

9. I further relied on best practices and policies for crowd control by police officers established by the United States Federal Bureau of Investigation, the International Association of Chiefs of Police, The California Police Officers' Standard and Training agency (CALPOST), and from police departments across the country, including the:

- a. Oakland (CA) Police Department;
- b. Miami Metropolitan Dade County Police Department; and
- c. Seattle (WA) Police Department.

II. Opinions Presented

10. Given the information available to me at this time, I have formed eight opinions, based on my knowledge, experience, and training that relate to the County of St. Louis' response to the events in Ferguson, Missouri, between the dates of August 9 through August 22, 2014. These opinions are outlined in detail below and include:

- a. Law enforcement agencies are apparently controlling the right to peaceably assemble with an ad hoc "regulation" that citizens in the immediate

area of the intersection of West Florissant and Ferguson can remain immobile for only five seconds or less;

- b. Enforcement of this ad hoc “regulation” appears to be capricious and arbitrary, and appears to be more often than not enforced against people of color and the young;
- c. Enforcement of this ad hoc “regulation” appears not to have been supported by written policy or training;
- d. Absent sufficient written policy and training it is difficult if not impossible to effectively *supervise* the implementation of that policy by line personnel;
- e. No written notice, public announcements, or published information was available to citizens regarding the Protester Assembly Zone or the “five-second” rule;
- f. These policy, training and supervisory failures have resulted in specific instances of people of color and younger citizens being arrested, jailed and potentially prosecuted for actions that are specifically protected by the U.S. Constitution; and
- g. Crowd control and incident management techniques employed by the St. Louis County Police, and supporting agencies, do not comply with the best practices for such activities developed by the Federal Bureau of Investigation, the International Association of Chiefs of Police, and the California Police Officer Standards and Training (POST) organization; and
- h. Even if the five-second rule were written, published and consistently supervised and enforced, there is no evidence known to me to support the contention that moving protesters are safer or less violent than those who stand still for more than five seconds.

A. Law Enforcement Controlling Free Speech in Ferguson Using Ad Hoc and Extra-Judicial Rules and Regulations

11. It appears from testimony available to me that law enforcement assigned to the Ferguson area were limiting and controlling the First Amendment rights to assembly and freedom of speech through the use of arbitrary, ad hoc, and extra-judicial procedures. For example, in their declaration, Grant Doty and Mustafa Abdullah note several times the apparent “five-second rule,” a prohibition by police on the scene in

Ferguson against citizens standing still in the “ground zero” area for more than five seconds. (Abdullah Testimony, TRO Hearing; Doty Declaration). There appear to have been no written or broadcast public notices regarding the policy, and enforcement of same appeared to have been arbitrary according to witnesses on the scene. (Doty Declaration). Based on my knowledge and experience, this stands in contradistinction to accepted and effective police practice.

B. Enforcement of “Five-Second Rule” Is Capricious, Arbitrary, and Focused Against People of Color and the Young

12. It appears from testimony available to me that law enforcement assigned to the Ferguson area were arbitrarily deciding when and where to apply their “five-second rule,” enforcing it more aggressively against “people of color and younger people regardless of color” and was apparently dependent upon “which law enforcement officer was enforcing it.” (Doty Declaration). Based on my knowledge and experience, this stands in contradistinction to accepted and effective police practice and constitutional protections.

C. Enforcement of Ad Hoc “Regulation” Appears Not To Have Been Supported by Written Policy or Training

13. There is no evidence available to me at this time to indicate that the imposition of the “five-second rule,” which appears to have been used to disrupt and control free speech and the freedom to peaceably assemble, was based on any written policy or procedure, nor does it appear to have been the subject of any specific training of the officers involved about how to *implement* the policy. This conclusion is supported by facts contained in the declarations of Mustafa Abdullah, Jo Holbrook, Joel Reinstein, and

Grant Doty, all of whom depict, in their sworn testimony, implementation of the five-second rule that varied widely in its form, appeared to be directed toward minorities, and exhibited itself in varying intensity depending on the race and/or age of the citizens encountered by the police. All of these artifacts indicate to me, based on my knowledge and experience, a lack of effective, written *policy* relating to the “five-second rule” and a lack of effective, constructive *training* regarding implementation of same. Based on my knowledge and experience, it is my opinion that it was negligent for the responding agencies to not have trained effectively their police officers, particularly those in “special units” with response duties, in the methods and tactics of dealing with civil disturbances, including in the proper implementation of the five-second rule

14. Detailed guidance is available to police agencies regarding policy, training, preparation, supervision, and management of police response to civil disturbances from numerous sources, including the Federal Bureau of Investigation, the International Association of Chiefs of Police, The California Police Officer Standards and Training organization (POST), and other trusted law enforcement agencies. All of these sources emphasize good policy, effective training, and close supervision of such high-risk critical tasks. Policy, training and supervision, based on my knowledge and experience, are essential elements to the delivery of complex services and activities inherent in policing.

15. The lack of training and supervision in Ferguson, Missouri before and after August 18, 2014 is evident from:

- a. The varied and apparently random differences in the ways in which police policy was enforced against citizens at “ground zero” in Ferguson, Missouri;

b. Implementation of capricious and arbitrary restrictions of the freedom of speech and the right to peaceably assemble such as the use of a “five-second rule” subjecting citizens peacefully protesting or *observing* protests from standing still for more than five seconds (I know of now known research of accepted national policy that declares that moving protesters are safer or less violent than those who stand still for more than five seconds);

c. The apparent lack of a unified command and control presence during disturbances in Ferguson; and

d. The failure to adhere to “best practices” in controlling civil disturbances.

16. Based on my knowledge and experience, even if police managers and executives fail to train prior to an event such as the one experienced in Ferguson, Missouri, there is ample opportunity to train concepts such as implementation of “public safety” rules similar to the “five-second rule” prior to deploying police officers into positions in which they may have to make judgments and arrests based on ad hoc policy developments. For example, pre-shift briefings describing crowd control policies, enforcement methodologies, and acceptable police tactics are common-place in police responses to civil disturbances.

17. Based on my knowledge and experience, failure to articulate clear and reasonable policy makes it virtually *impossible* to supervise those policies in the field, and dramatically increases the potential for individual officers to interpret the “policy” in ways that were unintended without correction by supervisory personnel.

D. Absent Responsive Written Policy, Supervision Become More Difficult

18. It appears from the disparate, irregular, and arbitrary police response in Ferguson that there was absolutely inadequate policy regarding police management of citizen assemblies. This lack of policy apparently led to inadequate supervision and discipline of the police response to what, initially, was merely a lawful assembly of

citizens to protest a perceived grievance concerning the treatment of a citizen by officers of the Ferguson Police Department. The end result of these failures by local police agencies was an event that spun out of control, thanks in part to inappropriate initial response to “protest.”

E. No Written Notice or Public Announcement Regarding the “Protester Assembly Zone”

19. It is clear to me, based on the record available in this case, that even after the Protester Assembly Zone was established some time on the afternoon of August 19, 2014, there was little to no notice by law enforcement that an alternative area for demonstrations was available to protesters. Witnesses whose declarations I have reviewed have stated that they were never told by police officers that such an area existed. Again this reflects a lack of advanced planning, effective policy implementation, and inadequate supervision and training on the part of the deployed law enforcement agencies.

F. Failures to Develop Policy, Train, and Supervise Law Enforcement Personnel Led to Capricious and Arbitrary Enforcement Activities

20. Ample evidence exists to indicate that the policy, training and supervisory failures of the law enforcement agencies involved in response to the demonstrations observed in the wake of the Michael Brown shooting led to capricious and arbitrary application of law enforcement activities. “Move-along” responses by law enforcement appeared disproportionately focused on minorities. (Doty Declaration; Reinstein Declaration; Holbrook Declaration). The capriciousness and arbitrariness of the

application of the “five-second rule” is also underlined by the number of questionable arrests made resulting in releases without prosecutions.

G. Failure to Adopt Modern Crowd Control Techniques

21. A great deal of work has been done regarding crowd control techniques by American policing since the debacles witnessed in the 1960s and 1970s. Definitive “how to” documents and model policies have been developed by the International Association of Chiefs of Police, the Federal Bureau of Investigation, state “POSTs” (Police Officer Standards and Training organizations) and individual police agencies, such as St. Petersburg, Florida; Seattle, Washington; Oakland, California; Chicago, Illinois; Metro-Miami, Florida; and other agencies. I see *no indication* that the reforms developed years ago by these leading edge law enforcement agencies have informed decisions by the Ferguson and St. Louis County, Missouri police departments. Without adequate *policy*, effective training is impossible. Without effective *training*, adequate supervision is impossible. The end result is a group of well-equipped but unenlightened police officers who have the “Toys but not the training!” and who are incapable of implementing effective responses to legitimate civil protest.

H. Five-Second Rule is Ineffective To Promote Safety

22. Based on my knowledge and review of the literature, I know of no research of accepted national policy that declares that moving protesters are safer or less violent than those who stand still for more than five seconds.

23. Based on my knowledge and experience, I know of no American police department that employs a crowd control tactic similar to the “five-second rule.”

III. Conclusion

24. The opinions presented in this expert's report are presented to a reasonable degree of professional certainty. The opinions offered above are based on the record available to me at this time, and are subject to revision based on review of additional information, data or testimony, as it may become available to me.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 25th day of August, 2014.

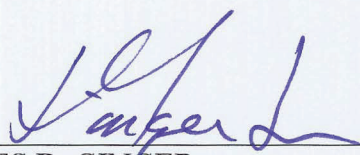
By: 
JAMES D. GINGER

EXHIBIT A

Curriculum Vita

***James D. Ginger
6877 Francis Marion Rd
Pamplico, SC 29583
(210.240.2159)***

EDUCATION:

Ph.D., Public Administration, Center for Public Administration and Policy, Virginia Polytechnic Institute and State University, Blacksburg, Virginia (1984).

Master of Science, Justice Administration, University of Evansville, Evansville, Indiana (1977).

Bachelor of Science, Law Enforcement, University of Evansville (1975).

Bachelor of Arts, Sociology, University of Evansville (1973).

PROFESSIONAL EXPERIENCE:

Chief Executive Officer, Public Management Resources, San Antonio, Texas (April, 1992-present)

Associate Professor of Criminal Justice/Executive Director, Center for Justice Policy, St. Mary's University, San Antonio, Texas (August, 1992-present) and Chief Executive Officer, Public Management Resources, San Antonio, Texas (April, 1992-May, 2001).

Deputy Director, Police Foundation, Washington, D.C. (1986-1992).

Director, Southern Police Institute, University of Louisville, Louisville, Kentucky (1988-1989).

Management Services Administrator, San Antonio Police Department, San Antonio, Texas (1984-1986).

Assistant Professor of Political Science and Criminal Justice; Coordinator, Criminal Justice Program, Department of Political Science and Criminal Justice, Radford University, Radford, Virginia (1981-1984).

Assistant Professor of Criminal Justice, Faculty and Department Chair, Bluefield State College, Bluefield, West Virginia (1977-1981).

Director, Research and Planning Unit, Evansville Police Department, Evansville, Indiana (1975-1977).

Personnel Officer, Evansville Police Department, Evansville, Indiana (1973-1975).

Police Officer, Evansville Police Department, Evansville, Indiana (1969-1973).

RELATED PROFESSIONAL RESPONSIBILITIES AND ACHIEVEMENTS

Public Management Resources (1992-present)

The Chief Executive Officer of Public Management Resources is responsible for strategic planning, marketing, budgeting and management. The position oversees complex planned change and organizational development projects throughout the United States and foreign countries.

Police Foundation (1986-1992)

The Deputy Director of the Police Foundation is a senior-level executive position reporting directly to the President of the Police Foundation.

Managed a staff of twenty full-time professionals and 25 primary and field consultants. Responsible for establishing project plans, developing program and project strategies, and overall program management for research and technical assistance projects totaling more than \$2.4 million annually.

Planned and implemented a nationwide technical assistance and training project for the U.S. Bureau of Justice Assistance. The project provided training and technical assistance in the areas of Integrated Criminal Apprehension Programs (ICAP), arson control programs, STING programs, and organized and white collar crime investigation programs.

Delivered or supervised the delivery of technical assistance to more than 100 individual police departments, including the Kentucky State Police; the cities of Atlanta, Tampa and Dallas; Yale University; and others.

Developed a strategic plan for technical assistance programs for the Police Foundation, including new program development, marketing and implementation strategies, and diversification strategies. Moved the Foundation from a purely research organization to one which has a balanced research and technical assistance approach to improving law enforcement.

Developed an innovative strategic planning methodology for law enforcement agencies, using a modified Delphi technique and nominal group processes to identify and articulate critical policing needs, action steps, missions, values and goals.

Developed and managed grants and contracts from federal, state and local sources totaling more than \$3 million, including agencies such as the Bureau of Justice Administration, the Office of Juvenile Justice and Delinquency Prevention, the Florida Supreme Court and numerous

local police agencies and community organizations.

Southern Police Institute (1988-1989)

The Director of the Southern Police Institute is an executive-level position, responsible for external relations among the Institute's many constituencies. During an 18-month sabbatical from the Police Foundation:

Managed a professional staff of twelve full-time and part-time faculty, trainers, and professionals. Responsible for strategic planning, marketing, strategy development, budget development and program development for the nation's premier police management institute.

Planned and implemented a long-range strategy to move the institute into a position of strength in both the educational and training markets in police supervision, management and administration in the United States.

Developed grants and contracts in excess of \$750,000 with state and local governmental agencies, including the states of Kentucky, Ohio, Florida and North Carolina, and local governments such as St. Paul, Minnesota; Springfield, Illinois; Greensboro, North Carolina, and others.

San Antonio Police Department (1984-1986)

The Management Services Administrator was a senior-level management position reporting directly to the Chief of Police of the San Antonio Police Department. At the time, the City of San Antonio was the tenth largest city in the United States, with a police complement of over 1,700 sworn personnel.

Information Systems Development

Developed a comprehensive five-year information management plan for the SAPD, using a new priority development methodology and outlining a new strategic direction for information processing for the department, which used two IBM-style mainframe computers.

Developed a systems design function for the department which provided complete system definition and design formats to the centralized data processing unit for the city.

Created a technologically advanced microcomputer system for the department, moving the department from a cost accounting research mode to a complex model-building and quantitative decision-making mode.

Improved major information systems delivery to the department from the centralized city data processing unit from one major system per three years to more than 13 per year.

Improved ad hoc information systems request delivery to the department from the centralized city data processing unit from 16 percent to 98 percent.

Budget Development

Planned and developed the annual budget for the department, a \$78 million general fund and capital expenditure program for FY 1986-87.

Exercised direct responsibility for the \$2.5 million Planning Section budget which included funds for the department's information systems operations and acquisition.

Developed and coordinated presentation of FY 1986-87 budget for the city's public safety services, a \$159 million general fund and capital expenditure budget.

Program Planning

Served as a member of the City Manager's "Strategic Planning Group," a group with overall responsibility for implementing strategic management as a city government planning process.

Served as a member and coordinator of the Police Chief's Executive Planning Group, a group responsible for decision-making and program development for the department.

Developed a program of strategic planning for the department including use of the Delphi technique and other innovative strategic planning processes.

Developed a long-range planning process for the department, to include the department's first five-year plan.

Research

Developed research and recommendations concerning feasibility, configuration and operation of the SAPD Police Training Academy, a \$3.6 million, multi-phased, regional police training facility, completed in 1990.

Developed research and recommendations concerning feasibility, configuration and operation of a SAPD detention facility, a \$2 million project designed to save the city \$4.3 million per year.

Developed research and recommendations for an innovative program of delivery of police services for downtown San Antonio.

Developed research and recommendations and coordinated creation of documentation for a \$20 million public safety bond package for the SAPD and the San Antonio Fire Department.

Program Evaluation

Routinely evaluated program performance for a variety of police programs, including the police Repeat Offender Program.

Developed productivity and evaluation measures for all SAPD divisions.

Developed overall organizational productivity indicators for the SAPD.

Developed organization effectiveness, efficiency and economy measures for the SAPD.

Grants Management

Directed the grants administration process for the SAPD, with funding totaling \$700,000 per year for programs in planning, information systems, crime prevention, juvenile justice and minority recruiting.

Management Functions (staff direction)

Directed a professional staff of twelve, including five sworn and seven civilian personnel.

Established task, priority, goals, objectives and evaluation criteria for all professional staff members.

Coordinated presentation development for staff reports presented to city council, state government units, the National Institute of Justice, etc.

Radford University (1981-1984)

The Coordinator of Criminal Justice was a mid-management position reporting to the Chair, Department of Political Science.

Coordinated a staff of nine full-time faculty from the departments of Political Science, Psychology, Social Work and Sociology. Developed course schedules, educational program components, multi-year programming plans and program policy.

Developed a Master of Criminal Justice degree program. Achieved state approval and certification; coordinated with other educational institutions. Developed recruiting, staffing and administration processes for the program. The program was an interdisciplinary approach, geared toward both in-service and pre-service personnel.

Served as advisor to Lambda Alpha Epsilon fraternity and as advisor to 300 criminal justice students.

Increased enrollment in the criminal justice program from 150 in 1981 to nearly 300 in 1984.

Bluefield State College (1977-1981)

The Department Chairman, Department of Criminal Justice, was a mid-management position reporting to the Chair, Social Science Division.

Directed a staff of ten full-time and part-time faculty in delivery of the College's criminal justice program. Prepared divisional budget plans, and served on various divisional committees. Delivered educational programs in criminal justice for two- and four-year degrees in three off-campus and one on-campus locations.

Served as faculty chair (1980-1981). Responsible for coordinating all standing and ad hoc faculty committees. Developed and implemented a merit pay system for all full-time faculty.

Conducted a comprehensive review of the management-governance structure of Bluefield State College. Produced a detailed report outlining problem areas, suggesting improvements and recommending positive organizational change.

Increased enrollment in the Criminal Justice Department from 180 in 1977 to nearly 400 in 1981.

Evansville Police Department (1969-1977)

The Director of Research and Development was a senior-level, sworn position, reporting directly to the chief of police.

Developed an integrated information processing system for the department, the first such system in Indiana. The system provided information on manpower allocation, budget data, crime analysis and program audit information.

Directed a staff of seven full-time and part-time personnel, including goal/objective development, evaluation criteria development and personnel scheduling.

Planned and implemented an innovative patrol service delivery system which required complete reorganization of patrol operations, basing manpower on workload and providing peak availability during peak demand times.

Developed the department's first comprehensive "Operations Manual." This process entailed complete review and revision of departmental position descriptions, operating procedures, rules and regulations.

Provided grant administration and reporting functions for the department, including federal funding of \$350,000 for a three-year patrol reorganization program.

DISSERTATION:

"Preparing for Crisis Management: The Use of Networking, Boundary Spanning and Collateral

Organizations in Planning for Strategic Response to Terrorism," Virginia Polytechnic Institute and State University, 1984.

PRESENTATIONS:

"Social, Political and Economic Trends Shaping Police Administration in the Third Millennium." Paper presented to the annual meeting of the Academy of Criminal Justice Sciences, Law Vegas, Nevada, 1996.

"Planning for the Future of British Policing." Paper presented at the University of Portsmouth, England, Institute for Criminological Studies, 1994.

"Six Trends Affecting American Policing." Paper presented to the Police Executive Leadership College, Ohio State University, 1993.

"Strategic Planning for Law Enforcement Executives." Paper presented to the Police Executive Leadership College, Ohio State University, 1992.

"Service Delivery to Culturally Diverse Communities: Responding to Social, Economic and Cultural Diversity." Paper presented to the annual meeting of the Southern Police Institute Alumni Association, 1991.

"Critical Trends Affecting Policing: A Precursor to Strategic Planning." Paper presented to the International Association of Chiefs of Police, Section for State and Provincial Police Planning Officers, 1990.

"Strategic Planning for Police: Building Planning Methods that Work." Paper presented to the annual meeting of the National Association of Police Planning and Research Officers, 1989.

"Strategic Management: A Methodology for Meeting Uncertain Futures." Paper presented to the annual meeting of the National Association of Police Planners, 1984.

"Terrorism and Interorganizational Cooperation: Strategic Management of America's Anti-Terrorist Response." Paper presented to the annual meeting of the American Society for Public Administration, 1983.

"Integrated Program Analysis Methodologies: A Quantitative Approach." Paper presented to the annual meeting of the Academy of Criminal Justice Sciences, 1982.

"Comparative Police Administration: A Proposal for the Eighties." Paper presented to the annual meeting of the Academy of Criminal Justice Sciences, 1981.

"Pre-Planned Crisis Intervention." Paper presented to the annual meeting of the Indiana Professional Police Association, 1977.

MONOGRAPHS, PUBLICATIONS:

Ginger, J.D. Under Observation: Leadership in American Policing, in McKenzie, I.K. and Bull, R., (Eds.), *Criminal Justice Research: Influence, inspiration and ideation*. Aldershot: Ashgate, 2001.

Ginger, J.D., et al., *A Management Study of the Gila County Sheriff's Department*. Indian Valley, Virginia: The Gallagher-Westfall Group, 1996.

_____, *A Performance Audit of the New Bern, North Carolina Police Department*. . Indian Valley, Virginia: The Gallagher-Westfall Group, 1996.

_____, *A Review of Personnel and Management Practices of the Pampano Beach, Florida Police Department*. Indian Valley, Virginia: The Gallagher-Westfall Group, 1995.

_____, *An Assessment of the Greenville, North Carolina Police Department*. Indian Valley, Virginia: The Gallagher-Westfall Group, 1995.

Ginger, J.D., *A Benchmarking Study of the Coatesville, Pennsylvania Police Department*. Purcellville, Virginia: The Gallagher-Westfall Group, 1994.

_____, *Manpower Deployment in the Coatesville, Pennsylvania Police Department*. Purcellville, Virginia: The Gallagher-Westfall Group, 1993.

_____, et. al., *A Management Review of the Cochise County, Arizona Sheriff's Department*, Purcellville, Virginia: The Gallagher-Westfall Group, 1993.

_____, et. al., *A Management Review of the Chino Valley, Arizona Police Department*. Purcellville, Virginia: The Gallagher-Westfall Group, 1992.

_____, et. al., *A Model Policy Manual for Housing Authority Police*. Cheshire, CT: Housing Authority Risk Retention Group, 1992.

_____, *An Assessment of Liability Risk Among Public Housing Authority Police*. Cheshire, CT: Housing Authority Risk Retention Group, 1992.

_____, *An Assessment of the Public Safety Management Systems at Yale University*. Washington, D.C., Police Foundation, 1991.

Ginger, J.D. "Strategies versus Tactics: Police Officials Identify Strategies for Drug Traffic Control Programs." Washington, D.C.: Police Foundation, 1991.

Ginger, J.D. and A. Pate, *A Study of Racial and Ethnic Bias in the Law Enforcement System of the State of Florida*. Washington, D.C.: Police Foundation, 1990.

Ginger, J.D. *Developing a Strategy to Improve Police Training: A Review of the Florida Law Enforcement Training Process*. Washington, D.C.: Police Foundation, 1990.

_____, *An Audit of the Tampa, Florida Police Department's Program Implementation Process*. Washington, D.C.: Police Foundation, 1990.

_____, *A Management Review of the Training Academy, Police Headquarters, The Port Authority of New York and New Jersey*. Washington, D.C.: Police Foundation, 1990.

_____, *Improving Police-Community Relations in Prince George's County, Maryland*. Washington, D.C.: Police Foundation, 1990.

_____, *Improving the Management Information Systems of the Birmingham, Alabama Police Department*. Washington, D.C.: Police Foundation, 1989.

_____, *A Strategic Plan for the Arvada, Colorado Police Department*. Washington, D.C.: Police Foundation, 1989.

_____, *Strategic Planning for the Charlotte, North Carolina Police Department*. Washington, D.C.: Police Foundation, 1988.

Ginger, J.D., and H. Williams, "The Threat of International Terrorism in the United States: The Police Response," *Terrorism*, Fall, 1987.

Ginger, J.D., *A Review of the Administrative Processes of the Tampa Police Department*. Washington, D.C.: Police Foundation, 1987.

_____, *Policing Atlanta in the Year 2,000: A Final Report*. Washington, D.C.: Police Foundation, 1987.

_____, *An Assessment of the Management Information Systems of the Arvada Police Department*. Washington, D.C.: Police Foundation, 1987

SPONSORED GRANTS AND CONTRACTS:

United States Department of Justice/City of Los Angeles	\$269,000
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Developed the monitoring methodology to be used in monitoring the police practices consent decree entered into by the Civil Rights Division, USDOJ and the Los Angeles Police Department concerning police operations, training, supervision, discipline, internal affairs investigations, and executive-level management (2001).

United States Department of Justice/Office of the Attorney General, Office of State Police Affairs, State of New Jersey	\$1,923,000
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Served as the independent monitor for a consent decree entered into between the United States Department of Justice, Civil Rights Division and the New Jersey State Police. Monitored and assessed NJSP activities in the areas of training, supervision, policy, discipline and internal affairs investigations. Served as an agent of the Federal District Court for New Jersey (2000-2009).

Office of the Attorney General, Civil Rights Bureau, New York State \$33,000

Assisted the Civil Rights Bureau in designing and implementing a comprehensive statistical and operational assessment of the New York City Police Department's training, supervision and administration of its stop and frisk practices (1999).

United States Department of Justice/City of Pittsburgh \$430,000

Selected by the U.S. District Court for the Western District of Pennsylvania to serve as the compliance auditor for a consent decree entered into by the City of Pittsburgh and the U.S. Department of Justice, Civil Rights Division. Monitored and assessed compliance in the areas of police selection, training, supervision, policy, discipline, internal investigations, and promotion (1997-2002).

Raytheon Corporation/National Institute of Justice \$81,000

Project Director for a project to assess the effectiveness of man-portable Forward Looking Infra-Red (FLIR) technology in police patrol and support applications (1998)

Alamo Area Council of Governments, San Antonio, Texas \$1,400,000

Grants coordinator for the San Antonio Police Department for a series of two-year projects to improve the automated information systems capacities of the police department. The awards were supplemented by smaller projects in juvenile justice, traffic enforcement, and other law enforcement related grants (1984-1986).

United States Bureau of Justice Assistance \$1,276,000

Project director for BJA's multi-year technical assistance and training project, a project which provided on-site technical assistance and training for more than 300 police agencies in topics such as: Integrated Criminal Apprehension Programs (ICAP), arson investigations, STING operations, white collar crime and police management information systems (1986-1989).

**United States Department of Justice
Office of Juvenile Justice and Delinquency Prevention \$ 399,000**

Designed a nationwide project for technical assistance and training in "Law Enforcement Handling of Juvenile Offenders," a project which assessed national strategies for responding to juvenile crime and delinquency (1988).

United States Law Enforcement Administration **\$ 320,000**

Project manager for the Evansville Police Department's Patrol Emphasis Program, a multi-year project which reorganized the department's patrol function (1976-1977).

International Business Machines and Chiefs Software **\$ 250,000**

Obtained the donation of an IBM AS400 mini-computer, 25 terminals and associated CHIEFS software for the Southern Police Institute's computer laboratory (1989).

City of Yonkers, New York **\$ 199,000**

Managed a multi-faceted planning and implementation contract for the Yonkers Police and Fire Departments. The project planned, designed and implemented an automated police-fire-EMS dispatch system and an automated records management system for police and fire (1993).

Ohio State Highway Patrol **\$ 154,000**

Project director for a contract to develop and deliver a series of 10-week command officers development course for the State Highway Patrol and for police executives throughout the state. The project contained instruction in the areas of police management, organizational design and change, psychology of organizations, police supervision and automated information systems (1988-1989)

United States Department of State **\$ 80,000**

Developed a 120-hour intensive curriculum for the nation of Trinidad and Tobago's National Police Service, focusing on improvement of administrative, managerial and operational methodologies to improve police-community interaction (1991).

Prince George's County Maryland **\$ 67,000**

Project director and principal investigator of a one-year project to provide the department with recommendations for improving community relations, internal affairs, training, supervision and policy.

Yale University **\$ 65,000**

Directed a multidisciplinary review of public safety management systems for Yale University, including a review of transportation, physical security, police and administrative processes (1991)

Tampa Police Department **\$**
50,000

Project director and principal investigator of a one-year project to assess the department's performance in the areas of recruiting, selection, retention and promotion of personnel; training curricula development and training processes; use of force policies and procedures; internal disciplinary procedures; and community relations systems. Conducted a one-year follow-up audit of departmental performance in implementing report recommendations.

Port Authority of New York and New Jersey **\$ 47,000**

Project director and principal investigator of a project designed to improve the quality of police training for the Port Authority, the largest transportation police agency in the world. Provided recommendations regarding organizational structure, staffing, curriculum development and supporting activities of the training academy (1989-1990).

The San Antonio Youth Firearm Violence Initiative **\$49,400**

Project director and principal investigator of a project designed to assess the effectiveness of police strategies to reduce youth firearm-related violence in the nation's ninth-largest city. Provided program design, data collection, and evaluation processes for the SAPD (1995-1996)

The Housing Authority Risk Retention Group **\$ 30,000**

Conducted a liability assessment and model policy development for 36 public housing authority police agencies, including the Chicago Housing Authority, the St. Louis Housing Authority and others.

Dallas Texas Police Department **\$ 27,000**

Project director of a performance audit for the Dallas, Texas Police Department's internal affairs division. Developed findings and recommendations to improve the department's ability to manage internal investigations.

Florida State Supreme Court, Commission on Racial and Ethnic Bias **\$ 13,000**

Project director for a one-year project to assess the levels of racial and ethnic bias in the justice system of the state of Florida. Developed recommendations and suggestions for improving police training, recruiting and selection, promotion and evaluation. Many of the report's recommendations were incorporated into law by the Florida legislature.

CASE CONSULTATION AND EXPERT TESTIMONY

1. *Williams v. Indiana State Police et. Al.*, provided case consultation for the **plaintiff**

regarding policy, training, supervision and management practices related to use of deadly force and response to suicidal persons—Michael Sutherlin & Associates, Indianapolis, IN (2013). Pending—deposed

2. *Reeves v. Town of Cottageville*, provided case consultation for the **plaintiff** regarding policy, training, supervision and management practices related to use of deadly force—Mullins McCleod, McCleod Law Group, Charleston, SC (2013). Pending--deposed
3. *Does 2 and 3 v. Rosa*, provided case consultation for the **plaintiff** regarding policy, training, supervision and management practices related to child sexual abuse—Mullins McCleod, McCleod Law Group, Charleston, SC. (2013) Pending--deposed
4. *YoungBey v. Metropolitan Police Department*, provided case consultation for the **plaintiff** regarding policy, training, supervision and management practices related to Emergency Response Team practices, policy development, training, and supervision—Douglas Wilson, Jenner and Block, Washington, DC. (2012). Settled after deposition--Deposed.
5. *Thomas v. Arnold*, provided case consultation for the **plaintiff** regarding policy, training, supervision and management practices related to race- and ethnicity-based policing issues— Angelina Jackson, Ohio Justice Policy Center. (2010). Settled after my report.
6. *Wilkins v. Maryland State Police*, provided case consultation for the **plaintiff** regarding policy, training, supervision and management practices related to race- and ethnicity-based policing issues—Peter Lallas, Hogan-Hartson (2007-2008). Settled after my deposition.
7. *Frank v. Los Angeles County*, provided case consultation for the **plaintiff** regarding employee classification and police practices for the Los Angeles County Police—Jack O'Donnell, O'Donnell and Harrison (2001). Verdict for the plaintiff.
8. *Smith v. Lexington-Fayette Urban County Government*. Provided case consultation for the **defense** in federal litigation involving police profiling (1999).
9. *Chavez v. Illinois State Police*. Provided case consultation for the **plaintiff** in federal litigation involving police profiling (1999)
10. *Gutierrez v. City of San Antonio*. Provided case consultation for the **defense** in federal litigation involving police training, supervision, discipline, and use of force (1998).
11. *Lu v. Harris County*. Provided case consultation for the **defense** in state litigation involving police operational procedures (1998).
12. *Glasscock v. City of Electra, Texas*. Provided case consultation for the **defense** in state

litigation involving personnel practices, personnel supervision and termination (1998).

13. *Blair, et al. v. State of Arizona*. Provided case consultation for the **plaintiff** in state litigation involving police operational procedures (1998).
14. *Choi v. State*. Provided case consultation for the **defense** (California Highway Patrol) in federal litigation involving false arrest and false imprisonment (1997).
15. *Valles v. County of Bernalillo*. Provided case consultation for the **defense** in state litigation involving police operation of emergency communications systems (1997).
16. *Graham v. New York City*. Provided case consultation for the **defense** in federal litigation regarding police operation of NCIC systems (1997).
17. *Wright v. City of Dallas*. Provided case consultation for the **plaintiff** in federal litigation regarding police supervision, discipline and control of corruption (1997).
18. *Vu v. Pennington*. Provided case consultation for the **plaintiff** in federal litigation regarding the New Orleans Police Department and national standards and practice relating to police selection, supervision, training, discipline and retention, and policy (1996).
19. *Kersh v. Whitehouse*. Provided case consultation for the **defense** in federal litigation regarding police standards and practice relating to police selection, supervision, training and discipline (1996).
20. *Papke v. The City of Irving, et al.* Provided case consultation for the **plaintiff** in federal litigation regarding police standards and practice relating to police selection, supervision, training and discipline (1996).
21. *Brown v. The City of Amarillo, et al.* Provided case consultation for the **plaintiff** in federal litigation regarding police standards and practices relating to special operations and SWAT operations (1996).
22. *Atkins v. The City of Carrollton and the City of Dallas*. Provided case consultation for the **plaintiff** in federal litigation regarding police standards and practices relating to warrant execution and special operations (1996).
23. *Broyles v. Denton County*. Provided case consultation for the **plaintiff** in federal and state litigation regarding police standards and practices relating to decisions to arrest (1996).
24. *Stuart v. Claggett, et al.* Provided case consultation for the **plaintiff** in federal litigation regarding police abuse of force and police standards and practices (1996).

25. *Bartee and Spurlock v. Red Lobster of Texas, et al.* Provided case consultation for the **plaintiff** in federal litigation regarding police standards and practices, powers of arrest, and use of force. (1996).
26. *Thomas v. Los Angeles County, et al.* Provided case consultation for the **defense** in federal litigation regarding police abuse of force and police standards and practices (1995).
27. *Kacal v. Houston Metropolitan Transit Authority Police Department.* Provided case consultation for the **plaintiff** in federal litigation regarding police standards and practices in policy development, training, supervision and discipline. Pending (1995).
28. *Perez v. City of Bay City.* Provided case consultation for the **plaintiff** in state litigation regarding police vehicle pursuits. Listed as expert witness. Settled (1995).
29. *Rogers v. Merritt, et al.* Provided case consultation for the **plaintiff** in federal litigation regarding police use of force and police standards and practices. Settled (1995).
30. *Rodriguez v. Dona Anna County.* Provided case consultation for the **plaintiff** in federal litigation regarding police use of force, special weapons and tactics response, and police use of deadly force. Listed as expert witness (1995) Settled (1997).
31. *Ahm v. District of Columbia.* Provided case consultation for the **plaintiff** in federal litigation regarding equal protection and police deployment practices. Settled (1995).
32. *Rangel v. City of Big Spring.* Provided case consultation for the **plaintiff** in federal litigation regarding police practices and execution of search warrants. Listed as expert witness. Settled (1995).
33. *Evans v. The American Heart Association.* Provided case consultation for the **plaintiff** in state litigation regarding police practices in high-speed pursuit and emergency vehicle operation. Listed as expert witness. Settled (1997).
34. *Sanchez v. County of Medina.* Provided case consultation and expert witness services for the **plaintiff** in federal litigation regarding police practices, use of force, training, selection, supervision and retention. Listed as expert witness, deposed, and testified (1995).
35. *Andrus v. City of New Orleans.* Provided case consultation for the **plaintiff** in a federal litigation regarding police use of excessive force. Listed as expert witness. Settled, (1994).
36. *Sinthasomphone v. City of Milwaukee.* Provided case consultation for the **plaintiff** in federal litigation regarding institutionalized racism in the Milwaukee Police Department in a civil case resulting from the Jeffrey Dahmer incident in Milwaukee, Wisconsin.

Listed as expert witness, deposed. Settled, (1994).

37. *Hoffman v. Sheffield*. Provided case consultation for the **plaintiff** in a federal civil litigation involving excessive force, negligent supervision and discipline. Listed as expert witness, deposed and testified (1994).
38. *Baker v. City of Galveston*. Provided case consultation for the **plaintiff** in a federal civil litigation involving use of deadly force, negligent training, supervision, policy and discipline. Listed as expert witness (1994). Settled.
39. *Coleman v. City of Grapevine*. Provided case consultation for the **plaintiff** in a federal civil litigation involving malicious prosecution, negligent training, supervision and discipline, and negligent investigation of felony crimes. Listed as expert witness, deposed, testified, (1994).
40. *Snyder v. Barthelemy*. Provided case consultation for the **plaintiff** in a federal civil litigation involving negligent selection, retention, use of force and supervision (1994). Listed as expert witness. Testified, (1995).
41. *Glaze v. County of Nueces, Texas*. Provided case consultation for the **defense** in a state litigation involving police vehicle pursuit, represented by Brin & Brin. Provided consultation relating to policy, training, supervision and discipline (1994). Listed as expert witness. Case settled. Not deposed.
42. *Alfaro v. County of Medina, Texas*. Provided case consultation for the **plaintiff** in a federal civil litigation for violation of title 1983, represented by Clark & Gamble. Provided consultation relating to police recruitment, selection, retention, discipline, promotion, policy, training, use of force, and internal discipline. Deposed. Settled, (1994).
43. *Shelton v. Bernalillo County*. Provided case consultation for the **plaintiff** in a federal civil rights case involving use of NCIC protocols for wanted persons Settled (1994).
44. *Askew v. the District of Columbia*. Provided case consultation for the for the **plaintiff** in a civil litigation for violation of title 1983, represented by Patton, Boggs and Blow. Provided consultation relating to police training, policy, supervision, standards and practices, internal affairs and discipline (1993).
45. United States Congress, House Committee on Administration and Police. Provided consultation regarding police selection, promotion, testing and grievance processes to the committee (1993).
46. *Jackson v. Lexington-Fayette County Urban Government*. Provided case consultation for the **defense** in a civil litigation for abuse of force. Provided case consultation relating to police training, policy, supervision, internal affairs and discipline. Conducted

extensive empirical analyses of the internal affairs and disciplinary decision-making processes (1992-1993). Listed as an expert witness. Case settled. Not deposited.

47. Provided case consultation and strategy development services to the City of Clearwater in preparation for pending litigation concerning several allegations of police misconduct. Conducted empirical research regarding internal affairs, supervision, discipline, policy and standards and practice (1992). Listed as expert witness. Not deposited.
48. United States Congress, House Judiciary Committee. Provided expert testimony regarding police standards and practices for the subcommittee on civil rights and liberties. Worked extensively with House staff regarding policies for the new NCIC 2000 information system, providing insight into police operations, police policy and standards and practices (1991)
49. *Van Hook v. Southern Railway*. Provided case consultation for the **defense** in a false arrest civil litigation, represented by Middleton and Reutlinger, Louisville, Kentucky. Provided case consultation relating to police standards and practices, training and supervision (1988).
50. *Davis v. City of Evansville*. Provided case consultation for the **defense** in an employment practices civil litigation, represented by the City Attorney, Evansville, Indiana. Conducted empirical research regarding height as a *bona fide* occupational qualification. Assisted in development of case strategy and testified at trial (1975).

RELATED EXPERT TESTIMONY EXPERIENCE

Pursuit Driving Tactics & Policy

Developed empirical reviews of pursuit driving policies for 85 police and sheriff's agencies in 27 states. Wrote model pursuit driving policies for 36 police agencies in 24 states.

Police Training

Developed empirical training reviews of more than 90 police and sheriff's agencies, including Tampa, Florida; the Port Authority of New York and New Jersey; Prince George's County Maryland and others. Directed the Southern Police Institute at the University of Louisville, one of the nation's premier police management training centers.

Supervision

Developed supervisory training packages for many of the nation's major law enforcement agencies, including the Ohio State Highway Patrol, the federal Bureau of Justice Assistance, and individual municipal and county law enforcement agencies.

Use of Force

Conducted empirical reviews of use of force policies for more than 100 police and sheriff's agencies in 30 states, including Tampa Florida; Dallas, Texas; Lexington, Kentucky; Clearwater, Florida and Prince George's County, Maryland. Wrote model use of force policies for 38 police agencies.

Public Housing

Developed an empirical review of 36 public housing police agencies, including development of model policies and recommendations for operational improvements in the area of: domestic violence, use of force, selection and promotion, training and discipline.

Selection & Retention

Developed empirical review of selection and retention systems for more than 100 police agencies in 27 states, including an assessment of law enforcement selection processes for the state of Florida and for major urban and rural jurisdictions throughout the U.S.

Discipline & Internal Affairs

Conducted empirical reviews of internal affairs processes and police discipline for major American police agencies, including Tampa and Clearwater Florida; Prince George's County, Maryland; Lexington, Kentucky; and Dallas, Texas.

MEMBERSHIPS AND PROFESSIONAL ACTIVITIES

Member, San Antonio Police Training Academy Training Advisory Board, 1997-1999.

Member, Greater San Antonio Crime Prevention Commission, 1997-1999.

Chair, Strategic Initiatives Group, Greater San Antonio Crime Prevention Commission, 1997-1999.

Member, editorial group, "National Report on Juvenile Offending and Victimization," Chapter Five: "Law Enforcement's Response to Juvenile Crime," Office of Juvenile Justice and Delinquency Prevention, National Center of Juvenile Justice, 1994.

Member, National Advisory Board, Juvenile Justice Systems Development Project, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (1992-1995).

Advisor, Citizens' Committee on Police Internal Review, San Antonio, Texas, 1993.

Member, National Technical Board, U.S. Department of Justice, Bureau of Justice Assistance, Juvenile Justice Resource Center (1992-present).

Assisted the City of Waxahachie, Texas in development of grant applications exceeding \$250,000 for the U.S. Department of Justice's Community Policing Initiative. The Waxahachie grant was one of only six in Texas to be funded, and one of only two to receive full funding from the U.S. Department of Justice (1993).

National chairman, Special Interest Group on Emergency Management, Section on National Defense and Security Administration, American Society for Public Administration (1983-1985).

Member, National Board of Officers, Section on National Security and Defense Administration, American Society for Public Administration (1983-1985).

Criminal Justice Reviewer, *Administration and Society* (1987-present)

Public Management Association

American Society for Public Administration

Phi Kappa Phi National Honors Society

TEACHING EXPERIENCE

Undergraduate Classes

- Constitutional Law
- Criminal Law
- Criminal Evidence and Procedure
- Human Resource Management
- Introduction to Criminal Justice
- Introduction to Corrections
- Organization and Administration
- Police and Public Policy
- Research and Evaluation Methods
- Social Deviance
- Police Organization and Behavior

Graduate Classes

- Organizational Theory
- Policy Analysis
- Program Evaluation
- Research Methods
- Public Administration

SPECIALIZED CURRICULA DEVELOPED

Urban Police Operations, a 160-hour in-service curriculum for police managers and executives, developed for the U.S. Department of State.

Strategic Management and Planning for the Federal Judicial Police, Puebla, Mexico.

Command Officers Development Course, a 10-week, 400-hour in-service curriculum for police managers and executives developed for the Southern Police Institute, University of Louisville.

Staff Officers Development Course, a 3-week, 120-hour in-service curriculum for police supervisors, developed for the Southern Police Institute, University of Louisville.

Managing Integrated Criminal Apprehension Programs, a 24-hour in-service curriculum for police managers developed for the U.S. Bureau of Justice Assistance.

Investigation of Arson Cases, a 24-hour in-service curriculum for police and fire investigative personnel, developed for the U.S. Bureau of Justice Assistance.

Building Community Issues for Community Policing, a two-day in-service curriculum for police managers and supervisors of Hendry and Lee counties, Florida.