

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 RAYMING CHANG, et. al., : Civil Action No.
 : 02-02010 (EGS) (AK)
 Plaintiffs, :
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 v. :
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 UNITED STATES, et. al., :
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 Defendants. :
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 JEFFREY BARHAM, et. al., : Civil Action No.
 : 02-02283 (EGS) (AK)
 Plaintiffs, :
 :
 v. :
 :
 CHARLES H. RAMSEY, et. al., :
 :
 Defendants. :
 :
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 :
 CATHERINE BURGIN By Her :
 Guardian JENNIFER MARGARET : Civil Action No.
 RICE BURGIN, et. al. : 03-02005 (EGS)
 :
 Plaintiffs, :
 :
 v. : Pages 1 - 137
 :
 THE DISTRICT OF COLUMBIA, :
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 Defendant. :
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1 Deposition of CATHY LANIER, held at the Law
2 Offices of Bryan Cave, 700 13th Street, Northwest,
3 Suite 700, Washington, DC, commenced at
4 10:10 a.m., on Tuesday, August 30, 2005, before
5 Elizabeth Hudson Telson, a Notary Public in and
6 for the District of Columbia.

7

8 A P P E A R A N C E S O F C O U N S E L :

9 FOR THE PLAINTIFFS, RAYMING CHANG, et. al.:

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17 FOR THE PLAINTIFFS, JEFFREY BARHAM, et. al.:

18 PARTNERSHIP FOR CIVIL JUSTICE, INC.

19 BY: CARL MESSINEO, ESQUIRE

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21 Washington, DC 20006

22 (202) 530-5631

1 the cuffs were removed when they arrived at the
2 site. They were walked through a processing in
3 the same manner -- finger printing and
4 identification -- and then taken to a large open
5 area, seated on a mat in the gymnasium, and
6 re-flex cuffed wrist to ankle using flex cuffs.

7 Q. Was there a written prisoner processing
8 plan that was in existence for the September 27,
9 2002 events that addressed this specific manner of
10 handcuffing wrist to ankle using flex cuffs?

11 A. I don't believe the planning document
12 or the manual for the event specified that type of
13 cuffing.

14 Q. There was, in fact, a prisoner
15 processing plan for this event, correct?

16 A. Yes, sir.

17 Q. It, however, did not specify in it that
18 arrestees were to be cuffed wrist to ankle using
19 flex cuffs, correct?

20 A. I don't believe so.

21 Q. You had testified that if prisoners
22 were taken to a cell block, they would be

1 given to officers as to whether or not four cuffs
2 would be appropriate as distinguished from three?

3 A. The officers were briefed and engaged
4 in mock exercises prior to the event, and what
5 level of specificity that briefing went into with
6 regard to the use of three versus four cuffs, I
7 cannot testify to.

8 Q. As a general matter, when persons are
9 restrained using three cuffs, is the position that
10 they are constrained to one that would allow full
11 extension of their back?

12 A. It would depend on the person.

13 Q. Is it your understanding that for,
14 let's just say, the majority of persons who were
15 restrained with three cuffs on September 27, 2002,
16 that they were able to fully extend their back
17 while so constrained?

18 A. Probably not.

19 Q. What was the longest duration or period
20 of time that any arrestees were constrained with
21 three cuffs such that they could not fully extend
22 their back?

1 A. I have not reviewed all the documents
2 with regard to time constrains, but my knowledge
3 is somewhere in the neighborhood of 12 to 18 hours
4 was the longest.

5

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(Whereupon, three documents were marked
7 as Plaintiffs' Deposition Exhibits Numbered 7, 8,
8 and 9.)

9

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10

BY MR. MESSINEO:

11

Q. I am going to hand you what have been
12 marked as Exhibits 7, 8, and 9. My first
13 questions are going to pertain to Exhibit 7. So,
14 if you don't mind, take a look at Exhibit 7, and
15 let me know when you have familiarized yourself
16 with it.

17

I will tell you now that the area that
18 I am going to be focusing on is on pages 13 and
19 14, and there are three lines that carry over on
20 to page 15. This is the section that is captioned
21 Detention.

22

A. Okay.

1 Q. Was Commander Acosta aware of that mock
2 exercise?

3 A. Yes, he was.

4 Q. How do you know that?

5 A. Because I saw him there.

6 Q. Did Commander Acosta participate in the
7 final decision to introduce and utilize this
8 manner of restraint in connection with the
9 April 2000 demonstrations?

10 A. Yes, he did.

11 Q. How do you know that?

12 A. He was my direct supervisor at the
13 time, and he is the one that directed me to use
14 that manner of restraint.

15 Q. He directed you?

16 A. I was in charge of prisoner processing
17 in April of 2000.

18 Q. Would you have used that manner of
19 restraint had you not been directed to do so by
20 Jose Acosta, the commander at that time?

21 A. Would I have come up with that manner
22 or technique or that process?

1 of restraint as a practice, the wrist to ankle
2 manner of restraint, did it do so on the basis
3 that this method was known to be used by other law
4 enforcement jurisdictions?

5 MR. KOGER: Objection to practice in
6 the context of it being a legal term of art.

7 THE WITNESS: I'm sorry, ask the
8 question again.

9 BY MR. MESSINEO:

10 Q. Well, did it adopt this method of
11 restraint based on knowledge that it was used by
12 other law enforcement jurisdictions?

13 A. I can't say with specificity that there
14 was not someone who had knowledge that it was,
15 either was or was not used in another
16 jurisdiction. I am unaware of its use in another
17 jurisdiction.

18 Q. Did the District adopt this manner of
19 restraint on the basis of, or because it had been
20 recommended by an expert?

21 A. The recommendation that I am aware of
22 came from Commander Acosta with 30 years and --

1 Q. What I meant by, I did mean by an
2 outside expert.

3 Was the adoption of this manner of
4 restraint on the basis of any recommendation by an
5 outside consultant?

6 A. I am unaware of any.

7 Q. Was it made on the basis of any
8 recommendations by law enforcement associations?

9 A. I am unaware of any.

10 Q. What were the other alternatives that
11 were contemplated to this manner of restraint?

12 A. In 2000.

13 Q. Yes.

14 A. In 2000, other manner of restraint that
15 were considered for large open areas, which is the
16 only area where we had to devise some manner, was
17 to retain detainees in a large, open area by
18 attaching them to a fixed object.

19 Those options ranged from some sort of
20 fixed object attached to a wall at a level that
21 would provide some sort of comfort to that person
22 who would be attached to it; also, the attachment

1 of a person to a fixed object, possibly on a
2 floor, an I-bolt or something into the floor.

3 I believe also considered was trying to
4 purchase some sort of temporary multi-celled
5 structure that could be put up fairly quickly and
6 would be a safe manner of kind of containing
7 individuals and keeping them separated. Those are
8 the only ones that I can think of, but I know all
9 of those were discussed.

10 Q. Is it the view of the District that
11 this manner of restraint is a generally accepted
12 manner of restraint within the law enforcement
13 community at large?

14 A. Speaking specifically to the wrist to
15 ankle cuffing?

16 Q. Yes.

17 A. I believe it has been used by other law
18 enforcement agencies since we have used it. I am
19 not sure if it is currently being used by other
20 agencies or not. I could not answer that question
21 with a hundred percent certainty.

22 Q. What other agencies have used this

1 since devised by the MPD?

2 MR. KOGER: Objection as to devised as
3 being inconsistent with prior testimony.

4 MR. MESSINEO: Since first used by the
5 MPD.

6 THE WITNESS: I can't say which agency
7 with certainty. I have been told that other
8 agencies have used it since we used it.

9 BY MR. MESSINEO:

10 Q. Was this wrist to ankle manner of
11 restraint adopted based on the recommendation or
12 guidelines issued by a Federal government agency?

13 A. Not that I am aware of.

14 Q. After the implementation in April 2000,
15 did the MPD conduct any evaluations of the use
16 this manner of restraint?

17 By that, I mean either by issuing after
18 action reports or engaging in discussions among
19 command staff.

20 A. There were discussions after 2000
21 regarding that particular process that was used at
22 the Institute of Police Science, all of which were

1 about half of all people might fall into, but for
2 the average person, what is the difference, in
3 terms of security, between cuffing using three
4 cuffs and four cuffs?

5 A. The only difference is level of
6 mobility.

7 Q. Are you able to quantify what the
8 decrease in security and safety is, according to
9 the MPD, between the use of three and four cuffs
10 on an average person?

11 A. Range of mobility of about six to eight
12 inches is the best answer I can give you.

13 Q. How does that impact your concerns, as
14 stated, of escape?

15 Do you feel that a person who had an
16 extra six inches of mobility before their wrist
17 and ankle became connected tightly, would that
18 increase substantially the risk of that
19 individual's escape?

20 A. I would say that would increase
21 somewhat, but not substantially.

22 Q. What about the risk of assault?

1 That extra six inches of mobility,
2 would that substantially increase the ability of
3 an individual to engage in assault and let's just
4 say of a police officer?

5 A. I would say it would increase, not
6 substantially, but it would increase.

7 Q. When we talk about three cuffs, just to
8 be clear, we are not talking about having -- two
9 of those cuffs are wrapped around either the ankle
10 or the wrist of the arrestee, correct?

11 A. That is correct.

12 Q. So, the issue about mobility is really
13 that one cuff that connects the two, correct?

14 A. Correct.

15 Q. So, if we go from one cuff connecting
16 the two to two cuffs, would that give the average
17 person the ability to raise their fists over their
18 shoulder in order to strike a police officer?

19 A. I would say that they could not raise
20 their fists over their shoulder, but that is not
21 the only way you can strike a police officer.

22 Q. What about kicking a police officer?

1 to ankle handcuffing?

2 MR. KOGER: Objection; same issue we
3 raised before.

4 MR. MESSINEO: We will defer as before.
5 I don't have any other questions.

6 MS. DUNHAM: I have no further
7 questions.

8 MR. SCHWARTZ: Let me ask just a couple
9 of questions, if I may.

10 FURTHER EXAMINATION CONDUCTED

11 BY MR. SCHWARTZ:

12 Q. When you were testing the wrist to
13 ankle restraint, were you able to straighten your
14 back?

15 A. No.

16 Q. Do you have any, since having
17 experienced that, hypothetically, how that would
18 have felt after a number of hours (sic)?

19 A. You want me to give you my opinion of
20 what I think it would have felt like?

21 Q. Yes.

22 MR. KOGER: Objection.