

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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:
PARTNERSHIP FOR CIVIL JUSTICE : Docket Number: CAB-748-09
FUND :
:
Plaintiff, :
:
vs. :
:
DISTRICT OF COLUMBIA, :
:
Defendant. :
: Friday, March 9, 2012
- - - - - x Washington, D.C.

The above-entitled action came on for a hearing
before the Honorable JUDITH N. MACALUSO, Associate Judge,
in Courtroom Number 415.

APPEARANCES:

On Behalf of the Plaintiff:

CARL L. MESSINEO, Esquire
MARA E. VERHEYDEN-HILLIARD
Washington, D.C.

On Behalf of the Defendant:

CHAD W. COPELAND, Esquire
Washington, D.C.

12-01571

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P R O C E E D I N G S

1
2 THE CLERK: Calling the matter of Partnership
3 for Civil Justice Fund versus the District, civil action
4 78, I mean 748-2009. Parties state their names for the
5 record starting with the plaintiff.

6 MR. MESSINEO: Good afternoon, Your Honor. Carl
7 Massineo. With me at counsels table is Mara
8 Verheyden-Hilliard, both of us from the Partnership for
9 Civil Justice Fund.

10 THE COURT: Thank you.

11 MR. COPELAND: Good afternoon, Your Honor. Chad
12 Copeland on behalf of the District of Columbia.

13 THE COURT: All right. Thank you. You should
14 kind of get your long distance runner adjustments in order
15 because what I'm about to do is going to take a long time,
16 and it's often going to be less than fascinating. In
17 order to make the task of in-camera review, and ruling on
18 the motions in any way time consistent with the range of
19 my responsibilities, and the full burden of work that I
20 have to produce, this ruling is going to be on the record,
21 and for the full scope of this ruling you're going to need
22 to get a transcript. The order that's going to be
23 produced simply says, produce the entire document, produce
24 the entire document except for these portions of the
25 document. The order that's going to be produced, which is

1 about seven pages long, is that summary in nature, and so
2 the more fulsome treatment is going to be what I'm going
3 to be saying, and it's very time consuming to do that, and
4 so that's what, I'm going to get started on that now.
5 Obviously, we're here on cross-motions for summary
6 judgment. I'm granting the plaintiff, Civil Justice Funds
7 motion for summary judgment in part, and I'm denying the
8 District of Columbia's motion for summary judgment. To
9 just orient us toward what is an issue, I note that the
10 Internet publication issue has been withdrawn. Plaintiff
11 is still seeking an order requiring MPD to create and
12 produce the general index of public records that is
13 referred to in D.C. Code, Section 2536(A)(10). This Court
14 agrees with the reasoning expressed by Judge Richter in
15 his order of April 8th, 2011 in the case that is Fraternal
16 Order of Police versus District of Columbia, 2009-CA-
17 6776B, and leaving out some words in his statement he
18 reasoned as follows, and I quote, although, D.C. FOYA
19 states that the index of the Section 536(A) records should
20 be made, plaintiff has cited no legal authority to show
21 that defendant is required to create the index in the
22 first place, and I agree with that. Certainly plaintiff
23 did argue the point, but I find their argument in the
24 cases cited in support of it not to be persuasive. I note
25 that the plaintiff is also seeking attorneys fees and

1 costs. I will remind that all that the scope of the
2 request is copies of all MPD staff manuals and
3 instructions, including all general orders, special
4 orders, and all departmental directives and all statements
5 of policy. The burden of proof is on the District of
6 Columbia to sustain its action in not turning over any
7 document. That is by virtue of D.C. Code, Section
8 2537(B). I have previously ruled, and I persist in that
9 ruling that the fact that certain MPD documents apparently
10 are displayed on a private website does not on this record
11 constitute a waiver by the District of Columbia. In view
12 of subsequent argumentation by the same reasoning I also
13 conclude that unauthorized commercial publication and
14 sale, specifically by Laborcorp.com does not constitute a
15 waiver on this record. The record that I have is an
16 affidavit saying that there was no authorization for that
17 commercial publication. Now, that's my ruling. It's on
18 the record as it currently exists. I don't know what a
19 future record may show, but the record before me does not
20 support any finding that it was authorized, and thereby
21 constitutes a waiver. I hold that D.C. FOYA recognizes a
22 law enforcement privilege beyond investigatory records
23 compiled for law enforcement purposes. The plain language
24 of the statute provides for this. As the District of
25 Columbia argues the legislative history is consistent with

1 this interpretation and that's at defendant District of
2 Columbia's reply in support of its motion for summary
3 judgment at eight and nine. Persuasive precedent in
4 addition to the case is that the District of Columbia
5 cites, and includes U.S. versus Weber Aircraft
6 Corporation, which I believe D. C. did cite, and the Court
7 also finds instructive In re: Department of Investigation,
8 a Second Circuit 1988 case, found at 856F.2d481. Salient
9 holding from that case is that that cases recognizes, and
10 I'm quoting here,

11 "The law enforcement privilege has been
12 recognized in the absence of a statutory
13 foundation, and is largely incorporated into the
14 various state and federal Freedom of Information
15 Acts. The purpose of this privilege is to
16 prevent disclosure of law enforcement techniques
17 and procedures, to preserve the confidentiality
18 of sources, to protect the witness and law
19 enforcement personnel, to safeguard the privacy
20 of individuals involved in an investigation, and
21 other to prevent interference with an
22 investigation".

23 THE COURT: And that's quoted language leaving
24 out a few words from In re: Department of Investigation.
25 I would add to that list that the privilege also serves to

1 prevent release of information that would assist
2 perpetrators in committing a crime, or eluding
3 apprehension as well as information, the release of which
4 might endanger the public. It does not take much
5 imagination to think of scenarios in which the public
6 would be placed at great risk. If particular police plans
7 and strategies, which clearly affect the public, and which
8 clearly are not investigatory, were made public particular
9 in this era of terrorist threats. So, for all those
10 reasons I do hold that D.C. FOYA recognizes a law
11 enforcement privilege beyond investigatory records
12 compiled for law enforcement purposes. Just a moment
13 please.

14 (Pause.)

15 THE COURT: I suppose at this point I'll express
16 a great concern with the credibility of the District of
17 Columbia's representations. Ms. Hanson and Assistant
18 Chief of Police Patrick Burke both swear in their
19 declarations, and I'm quoting,

20 "Each exempt directive was reviewed line by line,
21 and paragraph by paragraph to determine if any
22 segregable portion could be produced. The
23 individualized review resulted in the
24 determination that each document must be withheld
25 in its entirety because the non-exempt

1 information was not reasonable segregable from
2 the exempt information. Again, redacting exempt
3 information would result in a document with only
4 a title followed by unintelligible meaningless
5 fragments. This avowal is transparently false
6 with respect to almost every document for which
7 it is asserted. Page after page of assertedly
8 non-segregable content is innocuous and beyond
9 serious argument does not reveal police methods
10 that would compromise law enforcement, or place
11 either the police or public at risk".

12 THE COURT: The record does not indicate that
13 Ms. Hanson is a lawyer, or that assistant Chief of Police
14 is a lawyer. So, the Court will provide them with the
15 benefit of the doubt and assume that they misconstrued the
16 reach of the law enforcement exception and the parameters
17 of the doctrine of segregability. This perhaps overly
18 generous assumption does not, however, excuse counsel for
19 the District of Columbia. Sir, you are an officer of the
20 Court, and you have a job in which you represent the
21 people of the District of Columbia. As an officer of the
22 Court and by virtue of your job you have a calling and
23 ethical responsibilities. You are responsible for the
24 accuracy of every document that you file in court, and
25 those affidavits are transparently false. A fact you have

1 to know. The District's willingness to rely upon false
2 documents undermines every argument the District of
3 Columbia puts forward. First, to get the documents
4 themselves, the first category of documents that I'll
5 discuss consists of the training bulletins. Those are TB
6 0802, 0801, 0102, 0301. With respect to TB 0301,
7 plaintiff possess this document, so the request for it is
8 moot, and the order will not include an order to produce
9 the document. None of the training bulletins has been
10 produced for in-camera inspection. Therefore the District
11 of Columbia has not sustained its burden of showing that
12 they fall within an exemption. No content argument is
13 made regarding dangerous to anyone. The only argument
14 rests on the scope of the request. That the request was
15 not broad enough to encompass the training bulletins, and
16 yet without the ability, actually to read the training
17 bulletins I cannot conclude that the Government's burden
18 of showing that the scope did not include them, has been
19 carried. Therefore the order will require that TB 0802,
20 TB 0801, and TB 0102 be produced. On its face the
21 plaintiff's request for copies of all MPD staff manuals
22 and instructions seems to cover the request. FOYA
23 mandates disclosure, and as I said the Government hasn't
24 provided the Court with the ability to conclude that the
25 Government is correct. The next documents, and there are

1 a great many of them, are assertedly within the law
2 enforcement privilege. First is general order 301.03 on
3 vehicular pursuits. The District argues or represents
4 that knowledge of information in the document could pose
5 issues for both an officer's safety, and public safety,
6 persons who may be prone to flee from the police would
7 have access to the criteria for when pursuit may be
8 initiated, and under what conditions pursuit must be
9 terminated. The Court has reviewed the documents, and
10 found that certain portions of the document should be
11 redacted because they will have the exact effect that the
12 District of Columbia refers to, and those portions are
13 listed in the order about to be released. It would be
14 gibberish if I simply read off the content, but they
15 involve portions of pages two, three, four, five, six,
16 seven, nine and 11. There is a great deal of the document
17 that remains for production. The next document is GO
18 302.01, calls for police services. The Government asserts
19 that knowledge of the information in this document would
20 provide suspects the determination criteria used for
21 prioritizing different calls for service. The document
22 establishes policies and procedures for handling minor
23 citizen complaints, vacant property checks and processing
24 calls for police services. The situation with respect to
25 this document is I think unique in the set of documents,

1 and that the whole brew ha ha about whether or not it
2 should be released is really rendered farcical. There is
3 a document on a public website that is a 1986 revision of
4 this document, which is a 1981 document. So, we're not
5 even talking about a document with any implications or
6 force and effect at all. The material in the 1981
7 document is innocuous. Its release would not endanger
8 officers or citizens if made public. I'm going to order
9 the entire document released. Not because of a waiver
10 principle, but because it's absolutely innocuous. With
11 respect to general order 302.02, radio broadcasts and
12 lookouts, the District asserts that knowledge of the codes
13 and terminology used by the police could place officers in
14 risk in that suspects within hearing distance would be
15 able to decipher sensitive material used when officers are
16 communicating over the police radio. The order describes
17 the meaning of certain 10 codes as well as specific
18 sensitive terminology. I think that Ms. Hanson's
19 affidavit with respect to this document is just flat out
20 mistaken. She must have had something else in front of
21 her at the time. Her description bears little
22 relationship to the document. The document does not
23 describe the meaning of certain 10 codes, or give code
24 information at all, and I'm ordering the entire document
25 released. The next document is 304.01, operation and

1 management of criminal investigations. The order
2 describes the criminal investigations process and
3 procedures, which contain sensitive information. The
4 Government asserts that disclosure of the procedures, of
5 how the investigators build their cases, procedures used
6 to identify targets, and how certain types of
7 investigations are handled, for example kidnapping, could
8 potentially harm future investigations by revealing
9 investigative techniques. Now, here the fact that this
10 document is on the LaFond (phonetic sp.) website ends up
11 being determinative, not because of the principle of
12 waiver, but because so much of the document is able to be
13 revealed that the portion of the document that the
14 District will be ordered to turn over would confirm to
15 anybody that the document on the LaFond website is
16 genuine, and so there is no confidentiality, or secrecy,
17 or privilege left to hold onto. The public release has
18 compromised this document to such an extent that the law
19 enforcement privilege has essentially been blown. It's
20 been irretrievably compromised, and the redaction is
21 future. Almost all of the document is innocuous. Not
22 withstanding the grand assertion in the affidavit that the
23 document is gone through line by line, and we would be
24 releasing only gibberish. It's first paragraph sets the
25 scene I think for just how innocuous the document is. The

1 first paragraph reads as follows. The purpose of this
2 order is one, is two rather, one, establish procedures for
3 the initial documentation and investigation of reported
4 criminal offenses. Two, fix specific responsibility for
5 the follow up investigation of reported criminal offenses,
6 and three, establish procedures for effective management
7 review, control and direction of criminal cases and
8 investigative resources. Units within the criminal
9 investigations division may, at the discretion of the
10 commander, adopt in whole or in part the management
11 control procedures prescribed in this order. The morals
12 division, intelligence division, and the district vice and
13 gambling units shall be exempt from the provisions
14 contained in this order. End quote. The description
15 about revealing how kidnapping is investigated is
16 misleading. That is to say Ms. Hanson's description, in
17 her assertion in her affidavit. The references kidnapping
18 reveal simply that it's handled by the robbery branch.
19 Other information is within the common sense of a
20 layperson with respect to kidnapping. So, the net result
21 of examination of the document reveals that the District
22 of Columbia is seeking to hold, for essential law
23 enforcement reasons, a document that is 25 years old,
24 refers to administrative units that do not exist any more,
25 and on top of that is non-binding. The pages marked not

1 to be disseminated are not within any justification in
2 FOYA for withholding, and so they'll be turned over.
3 There is nothing magical about that designation. This
4 document is also available on Law Corp I later learned.
5 So, it's not just from subsequent briefing. It's not just
6 the LaFond site, but it's also the Law Corp site. With
7 respect to general order 304.07, that's procedures for
8 obtaining pretrial eyewitness identification. The
9 declaration of Ms. Hanson states that post-arrest and
10 trial preparation protocols that are revealed in the
11 document could potentially harm future investigations and
12 prosecutions if known. This document was released into
13 the public record of the city council by the Office of the
14 Attorney General on September the 30th, 2008. Plaintiff's
15 counsel has obtained the document, and that renders the
16 request moot. The Court adopts plaintiff's argument
17 expressed on page five of their supplementation regarding
18 release general and special orders and requested
19 legislative history. The adopted argument leaving out
20 some words is as follows. For the District of Columbia to
21 claim such a heart felt privilege for a document that's
22 already been turned over, and is a public document
23 released to the city council, is reading from plaintiff's
24 argument, extraordinary.

25

1 "When providing sworn testimony to this Court the
2 District attests the document is sensitive, and
3 disclosure poses substantial harm. On the other
4 hand when it suits the Office of the Attorney
5 General it freely submits the very same document
6 into the public record in order to support its
7 opposition to legislation. The fact that the OAG
8 felt it appropriate to submit this order to the
9 council in order to inform public policy debate
10 underscores the logic of the D.C. FOYA as
11 enacted.

12 THE COURT: The apex of arbitrariness is reached
13 by the MPD, which released this order to the PDS under
14 FOYA in May 2008 and then denied it to the PCJF when it
15 filed its September 2008 request a few months later. Now,
16 actually, even though I'm censorious about this, this
17 could be an innocent mistake and a failure to communicate.
18 This is not like an attorney filing and then using an
19 argument after filing blatantly false documents. This
20 could just be a simple mistake not a violation of one's
21 status as an officer of the Court. The next document is
22 304.07, another general order. It's procedures for
23 obtaining pretrial eyewitness identification. No, I just
24 read that, and I beg your pardon for that. I'm on 3.409,
25 truth verification devices. Ms. Hanson swears that

1 knowledge of the protocols and procedures set forth in
2 this document would jeopardize the valid use of the
3 devices. As far as the Court can determine her
4 representation is completely inaccurate. The Court has
5 not been referred to any content in the document that fits
6 this description, and again the Court's examination does
7 not indicate that any document, any content fits that
8 description, and I've ordered the entire document release.
9 General order 304.12 concerns confidential sources. Ms.
10 Hanson swears that the procedures and protocols for
11 identifying and qualifying confidential enforcement,
12 informants rather, and the tactics for use of confidential
13 informants and operational assignments that are revealed
14 in the document could put informants in danger. The
15 Court's examination reveals one sentence that conceivably
16 falls within this description and that one sentence has
17 been redacted. The next general order is 304.17 the bait
18 car program. The Government objects that it would provide
19 information to suspects on how sites are selected allowing
20 them to avoid bait cars, and the Court agrees with respect
21 to most of the content in the document. Just a moment
22 please. Particular portions of the document will be
23 ordered to be produced on pages one, two, three, eight and
24 12, most of the document will not be produced. With
25 respect to general order 308.09, procedures for handling

1 armed robberies. Ms. Hanson swears that the document
2 concerns deploying personnel after armed robbery incidents
3 and release of the information could provide advance
4 knowledge of deployment strategies to persons with
5 criminal intent. With the exception of one paragraph, the
6 content is either basic common sense that lay citizens
7 possess, or is otherwise innocuous. The only content that
8 is potentially of assistance to criminals will be redacted
9 and the rest will be produced. The next general order
10 concerns casual clothes units. The order involves the
11 protocol for use of members in casual street clothes for
12 covert operations, and Ms. Hanson asserts that knowledge
13 of this information by a person with criminal intent could
14 result in risk to officer safety. The document sought to
15 be withheld is dated July 23rd, 1979. There is a document
16 on the website that's dated December 5th, 1986. The Court
17 will persist in its holding that the publication on the
18 LaFond website does not constitute a waiver. The record
19 is insufficient for me to conclude that it does, and so I
20 reviewed this 1979 document as though it were the document
21 in full force and effect within the Metropolitan Police
22 Department. Most of the document has been released, just
23 a moment please. There is one paragraph that has been
24 withheld. With respect to general order 309.01,
25 barricades, hostage situations, and other unusual

1 incidents, Ms. Hanson swears that the order deals with
2 tactical deployment procedures for situations within the
3 scope of the title and that knowledge of these deployment
4 strategies could place the safety of officers, victims,
5 and the public at risk. This is another document that was
6 released to the city council by the District of Columbia,
7 and then without objection after that it was released to
8 the public. The document has been secured by plaintiff's
9 council rendering the request moot, and the document will
10 not appear in my order as one that is to be produced.
11 General order 309.05, handling kidnapping and extortion
12 cases. Ms. Hanson swears that knowledge of the deployment
13 strategies and investigative techniques set for in the
14 document could place the safety of officers and victims at
15 risk. The Court concludes that there are certain
16 sections, which if known could conceivably be used by
17 criminals to their advantage. That content is contained
18 on the next to the last page. It's not a numbered page.
19 It's the next to the last page, and it's the, it's the
20 content in Roman numeral one. The rest of the document
21 will be released. With respect to general order 702.03
22 vice search warrant, again, Ms. Hanson swears that
23 knowledge would place the public at risk. The District of
24 Columbia did not describe any particular content that
25 places the public at risk. The document consists of

1 statements of the law and descriptions of internal
2 procedures. No portion of the document is apparent to the
3 Court that places the public at risk. Substantive
4 portions of the conduct of the search are within common
5 knowledge of the lay public, and therefore don't place the
6 subject, the public at risk. I've ordered the entire
7 document released. Actually, of great interest in the
8 current context is the paragraph, Roman numeral three,
9 (A) (1) (c) (2) on page 19. That paragraph states, and Mr.
10 Copeland I direct this content particular toward you.
11 That paragraph states, each reviewing official shall be
12 held personally accountable for the affidavits he or she
13 approves, that's the police. Each reviewing official, as
14 in you, shall be held personally accountable for the
15 affidavits he or she approves. Those need to be your
16 watchwords. I have two or three other police FOYA cases
17 before me, and you let the word go out that no District of
18 Columbia attorney is to do what you did in this case. I'm
19 not placing a phone call in this case. I'm not calling
20 Attorney General Nathan. The only record of what you've
21 done is this record right here in a transcript, if anybody
22 orders the transcript. I'm not calling your boss. So,
23 you and everybody else who handles FOYA cases in your
24 office better learn from this, because the next time
25 something like this is done there is going to be a phone

1 call, and I know Attorney General Nathan's sense of
2 idealism with respect to the responsibilities of the
3 attorneys who represent the people of the District of
4 Columbia. So, those particular words that are binding on
5 police supervisors need to be binding on you as an officer
6 of the Court, and I'm sure you recognize that.

7 (Pause.)

8 THE COURT: The next document is general order
9 802.01, major disaster and attack warnings. Ms. Hanson
10 swears that knowledge of deployment strategies expressed
11 in the document by persons with criminal intent including
12 terrorists could place safety of the officers and the
13 public at risk. First of all the document is over 40
14 years old. Second of all the document is completely
15 innocuous and contains no instruction that is not within
16 the common sense of the lay public. The document does not
17 describe deployment strategies that would place anyone at
18 risk. The instructions are at a non-specific level of,
19 remain on duty, report for duty, go to a shelter, and the
20 release of the entire document is ordered. General order
21 802.02, radiation detection program. Ms. Hanson swears
22 that knowledge of the content of this document could place
23 the safety of officers and the public at risk. The Court
24 concludes that details of the radiation detection program
25 could inform a terrorist in actions to confuse or evade

1 the system, and therefore endanger the public. Only
2 limited release of the document is ordered. Most of the
3 document will be redacted. The next document is 802.03,
4 nuclear power plant accident response plan. Ms. Hanson
5 swears that knowledge of the contents of the document
6 could place the officers and the public at risk. The
7 plaintiff argues that the public interest is served by
8 making such plans public, and that is a countervailing
9 consideration. The document contains a statement that
10 I've already referred to. Oh, no this is a different
11 statement. Release of the information contained in this
12 order requires the prior approval of the United States
13 Attorney Office. That statement is not a basis for
14 withholding the document. There is no indication that the
15 District of Columbia sought release as is contemplated by
16 D.C. Code, Section 2.532(C)(2). That sections provides
17 that an agency may ask to extend the time for a response,
18 or may actually extend the time for response by no more
19 than 10 days. If there is a need to consult with another
20 public body having a substantial subject matter interest.
21 There is no indication that the Government, that in the
22 sense of the District of Columbia ever did that, and all
23 of this is as usual a tempest in a teapot. The only
24 subject of the document is how the Metropolitan Police
25 Department will react to a nuclear accident occurring at

1 Calvert Cliffs 50 miles away. Second, the document is
2 ancient. It's undated, but it's signed by Chief Maurice
3 Turner. He was chief of police in 1981 to 1989, and in
4 matters of science and protecting the public, and reaction
5 to terrorist threats, 1989 is practically antediluvian.
6 So, it's an ancient document, and third the general order
7 is organizational, and to the extent that it's operational
8 its contents consist of precautions that would occur to
9 most people using no more than common sense, and a
10 publication of a document that expresses common sense
11 precaution is not likely to assist a terrorist. The
12 entire document is ordered released. General order 802.05
13 is the point of distribution, POD program. Ms. Hanson
14 swears that the order identifies locations, personnel
15 identified to counter catastrophic events to include acts
16 of terrorism. Knowledge of deployment strategies and
17 storage locations in these situations by persons with
18 criminal intent including terrorists could place the
19 safety of officers and the public at risk. The Court has
20 examined the document and agrees with these
21 representations, a couple of sentences will be produced,
22 and the rest of the document will be redacted. General
23 order 803.04, energy response plan. The District argues
24 that knowledge of the content of the plan would place the
25 officers and public at risk. The Court has redacted all

1 portions of the document that refer to the content of
2 plans, or who possess the plans. Other portions of the
3 document are released, and so content on pages three,
4 four, five and six is released, and that is set forth in
5 the order. General order 805.01, civil disturbance unit.
6 Ms. Hanson swears that the order identifies operational
7 and tactical deployment for MPD civil disturbance units
8 for major events, protests and emergencies. She states
9 that knowledge of these strategies by persons with
10 criminal intent including terrorists could place the
11 safety of officers and the public at risk. The document,
12 however, is exclusively organizational in nature. It does
13 not reveal any strategy that would assist those with
14 criminal intent. Release to the public would not hinder
15 police operations or endanger the safety of officers or
16 the public. The entire document is ordered released.
17 General order 805.02, special threat action team. Ms.
18 Hanson swears that the contents if known would place the
19 safety of officers and the public at risk. There are no
20 specific references provided, and the Court cannot
21 conclude from its own review that any of the content would
22 aid in execution of a terrorist act if known to a
23 terrorist. So, the Government has not carried its burden
24 of proof. General order, and the entire document is
25 ordered released. General order, 805.04, bomb threats and

1 explosive devices. Ms. Hanson swears that terrorists and
2 others with criminal intent could place officers and the
3 public at risk if they knew of the content of this
4 document. Again, the Government has not referred to any
5 portions of the document that are dangerous in this way.
6 The Court's review has not enabled to the Court to
7 conclude that there is even a single sentence that would
8 have this effect. The entire document is ordered
9 released. General order 901.10, carrying weapons and
10 transporting prisoners aboard aircraft. Ms. Hanson swears
11 that knowledge of the contents of the document would place
12 the safety of officers and the public at risk. The Court
13 agrees that certain portions of the document could have
14 this effect, and redactions have been permitted at pages
15 two, three, four and five. Substantial portions of the
16 document are produced. Special order 0808 is a directive
17 that supports general order 805.04. I'll see if its, I
18 wasn't able to find it, and I'll look for it again. 805,
19 just a moment please.

20 (Pause.)

21 THE COURT: Let me, let me go back and refer, I
22 see. All right. General order 805.04, bomb threats and
23 explosive devices, and I must retract what I said a moment
24 ago on that. I read my notes inaccurately. So, let me
25 state for the first time what the Court's analysis of

1 general order 805.04 is. No copy was submitted for the
2 Court's review. I wasn't able to review 805.04. So,
3 therefore the Government has not carried its burden of
4 proof, and the document is ordered released, and that
5 brings us to special order 0808, which is a directive that
6 supports general order 805.04, and special order 0808 was
7 not submitted to the Court for review, and so the
8 Government has not carried its burden of proof and the
9 document is ordered released. Circular 0303 is a
10 directive that supports general order 805.04. That
11 circular was not submitted for review, so the Government
12 has not carried its burden of proof, and that document has
13 been ordered produced. Special order 0011 consists of
14 changes to general order 301, operation of emergency
15 vehicles, fresh pursuit, and vehicular pursuit, and not
16 withstanding Ms. Hanson's heart felt avowals of disaster
17 if the document is turned over, it has in fact been turned
18 over to plaintiffs, which again calls into question the
19 credibility of her affidavit, the credibility of which has
20 already been smashed to smithereens. It could hardly be
21 more impaired by this particular defalcation. Special
22 order 8629 involves vice complaints, investigations and
23 arrests. The special order discusses the organizational
24 structure and operational goals of vice units and
25 procedures for exchanging confidential information. Ms.

1 Hanson swears, disclosure of these procedures could
2 potentially harm future investigations by revealing
3 investigative techniques. Ms. Hanson's affidavit bears
4 little relationship to the document. The special order
5 itself states, instead of discussing organizational
6 structure and operational goals, and procedures for
7 exchanging confidential information, the special order
8 itself says the purpose of this special order is to inform
9 members of the department of the new procedures for
10 selection of officials above the rank of sergeant to head
11 district vice and gambling. For the reason the document
12 is labeled not to be disseminated to the public, a
13 designation without foundation under D.C. FOYA and it's
14 been ordered released is not falling within any exemption
15 established by the act. Special order 8630, metro bus
16 security. Ms. Hanson swears, the special order outlines
17 security measures overt and covert employed on metro buses
18 for the safety of the passengers and the operators,
19 knowledge of these security measures by persons with
20 criminal intent including terrorists could place the
21 safety of passengers at risk. The Metropolitan Police
22 Department turned this document over to plaintiffs. In
23 its filing defendant District of Columbia's reply in
24 support of its motion for summary judgment on page 10 at
25 note five the District implies that the disclosure was

1 inadvertent, but no affidavit supports that conclusion,
2 and the Court concludes that there is no record that would
3 support any finding of inadvertent release, and so a
4 waiver is found. The court also observes that most of
5 this information has already been communicated to the
6 public by metro itself. So, plaintiffs will not find in
7 my order, an order that this document be produced because
8 the issue is moot.

9 (Pause.)

10 THE COURT: Special order 9114, witness
11 protection program. Ms. Hanson swears that the content if
12 known would place those participating in the program in
13 danger, and the Court agrees that there is content in that
14 document that would so, and has ordered redacted much of
15 the document. The Government will produce content on
16 pages one, four and six, but substantial portions of that
17 document will be redacted. Special order 0011, operation
18 of emergency vehicles. The special order describes
19 vehicle pursuit procedures for non-uniformed members and
20 members in unmarked vehicles, and Ms. Hanson swears that
21 knowledge of this information could pose issues for both
22 officer and public safety. The Metropolitan Police
23 Department turned this document over to plaintiff, again,
24 a the same location the District implies that the
25 disclosure was inadvertent but there is no evidence that

1 supports that assertion, and it certainly hasn't been
2 established on this record. So, there is waiver. The
3 issue is moot as the document has been overturned. The
4 content of the document I observe, is that officers who
5 are not in uniform, and/or in unmarked vehicles without
6 grill lights, portable lights or sirens, should make
7 traffic stops only in the case of a violation that is so
8 grave as to pose an immediate threat to safety or others,
9 and I don't know how anybody knowing that is going to
10 endanger the safety of anybody. So, I just make that
11 observation as well, but the whole issue has been moot by
12 the District's own decision to turn the document over at
13 some point. So, again my order will not order its
14 production because it's already been produced. Special
15 order 3.04 in-take guidelines for firearms, cases, release
16 of technical information contained in this order requires
17 the prior approval of the U.S. Attorney's Office Ms.
18 Hanson says, and in and of itself that will not carry the
19 day. The Government has not, the District has not carried
20 its burden of showing that it followed any procedures to
21 obtain approval from the U.S. Attorney's Office. The
22 procedure for that, as I said a moment ago, is contained
23 in the act, and the entire document is ordered released.
24 Special order 903, validation of individuals as members of
25 a criminal gang. Ms. Hanson swears that if this content

1 were known it would compromise the identification process.
2 Every, every item in the list of how to identify a gang
3 member is within the common sense of the lay public, and
4 would not endanger anybody by its release. The Court has
5 ordered the release of the entire document. Standard
6 operating procedure 6.02, incident command system. Ms.
7 Hanson swears that this SOP outlines both tactical and
8 operational procedures involving the incident command
9 system, which is utilized on the scenes of all major
10 events and demonstrations and unusual incidents, and that
11 if these strategies were known, persons with criminal
12 intent including terrorists could place the safety of
13 officers and the public at risk, and the Metropolitan
14 Police Department turned this document over to plaintiffs.
15 Again, there's the implication in a footnote that the
16 disclosure was inadvertent. There is no evidence of this,
17 and so the Government has not carried its burden of
18 showing that there was an inadvertent release and I do
19 find a waiver. In fact there is conceivable way that
20 knowledge of the organizational details in this document
21 could place anybody at risk. The document is completely
22 innocuous, and Ms. Hanson's sworn statement is practically
23 hysterical, and it shows once again the complete lack of
24 credibility for anything that she avows in her, in her
25 affidavit. Every once in a while she says something that

1 the Court finds to be supported. It's almost
2 coincidental.

3 (Pause.)

4 THE COURT: The next document is a Teletype
5 0901408 concerning follow up investigations. Ms. Hanson
6 swears that knowledge of the content of the document would
7 potentially harm future investigations by revealing
8 investigative techniques. The revealed investigative
9 techniques are, re-contact the complainant in crime of
10 violence cases within 24-hours of receiving a follow up
11 assignment and complete your report by the end of your
12 tour of duty. Now, how knowledge of that is going to
13 potential harm future investigations is genuinely beyond
14 imagination. It doesn't place anyone at risk, and the
15 assertion that it would is typical of the District's
16 response in this case. The next Teletype is 0102909,
17 precautions and protocols while assisting with homicide
18 investigations. The content includes procedures to
19 identify and protect potential witnesses. Ms. Hanson
20 swears that knowledge of the contents of the document
21 could harm future investigations and place witnesses at
22 risk. The document describes the actions of first
23 responders to preserve the crime scene and how they should
24 coordinate with homicide detectives. A release would
25 neither harm investigations nor place anybody at risk and

1 the entire document is ordered released. The next
2 Teletype is 0400909. The arrest of offenders residing in
3 community correction facilities. Ms. Hanson swears that
4 knowledge of the contents could harm future criminal
5 investigations.

6 (Pause.)

7 THE COURT: The Teletype instructs that the
8 sentence, defendant is a resident offender be written on
9 the PD-163 to let the arraignment judge and the papering
10 assistant know of the defendants status. The assertion
11 that this notation could harm investigations is
12 ridiculous. More to the point it's false. Mr. Copeland,
13 do you have any idea what a false statement like that does
14 to your professional credibility? Do you have any idea?

15 MR. COPELAND: I do, Your Honor. I have
16 listened to Your Honor today explain herself. I deeply
17 regret that my representations and my filings advocating
18 the department's positions have brought shame on my
19 office, brought shame on my position. I am very proud of
20 what I do.

21 THE COURT: And you should be.

22 MR. COPELAND: But I am not --

23 THE COURT: You know you represent the people of
24 the District of Columbia. That is a wonderful
25 professional position. You should be very proud of that

1 as long as you behave in accordance with that status.

2 MR. COPELAND: I understand that, Your Honor,
3 and I recognize quite clearly that I have brought
4 embarrassment on my job, and on the work of my colleagues
5 and I deeply regret that. I did advocate the department's
6 position throughout this case to the best of my abilities.

7 THE COURT: No, it's not to the best of your
8 abilities.

9 MR. COPELAND: Not to the best of my, you're
10 correct.

11 THE COURT: You can do better than this.

12 MR. COPELAND: Certainly. I advocated the
13 department's positions. In doing so I recognize the Court
14 firmly believes that I've fallen far short of my
15 professional obligations and my obligations to the Court,
16 and I deeply regret that.

17 THE COURT: All right.

18 (Pause.)

19 THE COURT: The next set of documents involves
20 the promotion eligible lists, and I just think that the
21 plaintiffs have the better of this argument. The burden
22 is on the Government to establish that release of
23 promotion eligible lists is a clearly unwarranted invasion
24 of privacy. There is the assertion that it is. There is
25 no particularized explanation of how disclosing to the

1 public the identification of public servants who are
2 eligible for promotion is information of a personal nature
3 where the public disclosure thereof would constitute a
4 clearly unwarranted invasion of personal privacy. There
5 is the argument made that it's somehow an invasion of
6 personal privacy and embarrassing or something. If
7 somebody's eligible for a promotion and they're not
8 promoted, that's not supported by anything except
9 argument. There aren't any affidavits. There aren't any
10 studies. There's no data. It's just an argument. I
11 accept the plaintiff's argument that promotion eligibility
12 is public information about public officers. I accept the
13 plaintiffs argument that the public has a very strong
14 interest in being able to know which officers are being
15 considered for higher officer within the police department
16 for a higher rank, for more responsibility. There is
17 awful lot that goes on on the street with respect to
18 police officers, and citizens may have a lot of knowledge
19 that they want to bring to the attention of the appointing
20 authorities concerning the actual behavior of an officer
21 in the course of that officer's job that may not otherwise
22 be known, and that may be very, very important to the
23 police department in making its personnel decisions. I
24 sit as an appellate court with respect to the motion and
25 firing cases for the police department, and I have been

1 exposed to instances where the conduct of an officer is so
2 over the line that this is clearly an individual who never
3 should have been promoted to begin with. It's clear to me
4 from my professional experience that if selecting
5 authorities have the ability to hear about that
6 information in the first instance before the person is
7 promoted, it could be a very good thing, and the public
8 has a strong interest in being able to have some kind of
9 ability to provide input where members of the public
10 believe it's important and appropriate. I accept the
11 plaintiffs argument that to reveal which officers are
12 eligible for promotion is at most a deminimous increase in
13 the public information available about an officer. These
14 are police officers, the plaintiffs argue, who carry
15 weapons, are authorized to arrest and use force, and may
16 enter communities and even private homes. There is a
17 reduced expectation of such niceties of privacy as may
18 attach to whether or not they're eligible for a promotion
19 under those job description circumstances. It's not a
20 request for private financial information. The officers
21 are public servants and financial information as far as
22 payment from their employer is not private. The materials
23 in question are not personnel records. I certainly accept
24 the plaintiff's argument that even if somebody should put
25 this list in somebody's personnel file that does not

1 convert it to an individuals personnel record as
2 distinguished from a special order within the directive
3 system distributed to all sworn and civilian members of
4 the department. The records are maintained outside of the
5 personnel file and therefore they're not personnel
6 records. So, all of those special orders that are
7 promotion eligible lists are required to be released,
8 07030909, 090901 and 0902. The next set of documents is
9 not in the same numerical order because it was contained
10 in a different binder, and the next set of documents is
11 contained in an equally, in a binder supported by an
12 equally invalid declaration of Patrick Burke and I'll go
13 through those documents. There are several District
14 memoranda, 2004-2 First District vehicular pursuit policy.
15 Assistant Chief of Police Burke swears that people may be
16 prone to flee police, persons who may be prone to flee
17 police would be enabled to do so more effectively if they
18 have access to the criteria of when pursuit may be
19 initiated and when terminated, and the Court agrees in
20 part, and has redacted most of the document allowing
21 release, or ordering release of certain portions on pages
22 one and two. There is a District memorandum identified,
23 without an identification number. It bears a date of
24 11-14-07 and it's the Seventh District tag reader
25 operational plan. I will say for simplicity rather than

1 repeating all the syllables of Assistant Chief of Police
2 without any disrespect to Assistant Chief Burke, I'm just
3 going to say Officer Burke because I'm running out of
4 voice. Officer Burke swears that, no I'll AC. That's
5 what I'll say, AC Burke swears that criminals would be
6 enabled to avoid tag readers if the content of this
7 document were known and I agree, and I'm authorizing it to
8 be withheld in its entirety, and because of the format of
9 my order for that reason this document doesn't appear in
10 my order because my order lists everything that must be
11 produced, so please don't be confused by that. The next
12 document doesn't have an identification number, it has a
13 date 5/10/10, the shot spotter gunshot detection system
14 slash sounds of gunshots response plan. AC Burke swears
15 that acknowledge of specific response strategies would
16 likely provide criminals with access to information that
17 would render the program ineffective. Most of the
18 material is already public information, or within the
19 common sense of the lay public. The Court has redacted
20 certain information on page two, which could potentially
21 help wrong doers. The next document is dated January 7th,
22 2005. Seventh District hotspot staffing. AC Burke swears
23 that knowledge of specific locations and deployment
24 strategies would likely lessen the police department's
25 effectiveness and the Court agrees. The document may be

1 withheld in its entirety. The next document is 2011-02,
2 investigation of bias related and hate crime. AC Burke
3 swears that knowledge of the contents of the document
4 could provide individuals with access to information that
5 may potentially harm investigations. The Court has
6 reviewed the document and concludes that there is no
7 content in the document that fits that description and the
8 entire document is ordered released. 2011-03, service of
9 arrest warrants. AC Burke swears that knowledge of the
10 procedures in the document could endanger members involved
11 in execution of warrants, and give criminals information
12 they could use to conceal evidence and information, and
13 there is no such content in the document. The Court
14 orders the release of the entire document. 2010-04, CID
15 watch commander AWIK response. AC Burke swears that
16 knowledge of specific investigative steps described in the
17 document would likely provide individuals with information
18 that could harm investigations, and the Court has reviewed
19 the document, and concludes that with one possible
20 exception there is no content in the document that fits
21 that description. The Court has ordered release of the
22 entire document except for a particular bullet point on
23 page two. 2008-02, fraud or identity theft cases. AC
24 Burke swears that knowledge of the specific investigative
25 steps and techniques in the document would potentially

1 harm investigations. The Court has examined the document
2 and concluded that there's no content in the document that
3 if known would harm investigations. 2008-04, follow up
4 investigations. Again, AC Burke swears that knowledge of
5 specific investigative steps and techniques could harm on
6 going and future investigations, and the Court agrees that
7 portions of the document may have this effect, and has
8 ordered that certain content be redacted. 2008-05,
9 process in handling assault with intent to kill
10 assignments. AC Burke swears that knowledge of specific
11 investigative steps described in the manual could harm
12 investigations. The Court has found some content in the
13 document that would have that effect, and has ordered
14 particular redactions. On pages two, three and four much
15 of the document is to be produced. 2007-04, operational
16 policy and procedures for the violent crime branch wanted
17 subjects. AC Burke swears that knowledge of investigative
18 tactics set forth in the document may delay the capture of
19 wanted persons or harm investigations, and there is no
20 content in the document that if known would either harm
21 investigations or delay capture of wanted person. The
22 entire document shall be produced. 2005-11, homicide
23 crime scenes. AC Burke swears that knowledge of the
24 tactics described in the tactics could harm homicide
25 investigations. The Court has examined the document and

1 concluded that there is one paragraph, which is known
2 could harm investigations. That paragraph is redacted.
3 Division orders, document 10-003 responding to allegations
4 of physical sexual abuse. The only privilege or exemption
5 I should say that the Government asserts is that knowledge
6 of investigative tactics would harm investigative efforts.
7 The portion of this document that describes investigative
8 techniques is well within the common sense knowledge of
9 the lay public, and therefore is not part of the law
10 enforcement privilege. For example the investigative
11 technique is that the officer is to interview neighbors
12 and others to make sure of the offenders address. It's
13 that order of common sense. The entire document is order
14 produced. Division memoranda 05-03, suspects eight years
15 old and under. AC Burke swears that specific
16 investigative techniques are described in the document,
17 which if known would render the techniques ineffective.
18 There is one section of the document the Court agrees
19 might I known interfere with investigations, and that
20 section is redacted. Division memorandum 04-04 PMI,
21 preliminary minimal investigation. AC Burke swears that
22 knowledge of investigative techniques presented in the
23 document would provide suspects or others with access to
24 information that would render police investigative
25 techniques ineffective. There is no such content in the

1 document, and the document is ordered produced in its
2 entirety. Certainly there is some material on
3 investigative techniques, but nothing that would render
4 investigations ineffective if known to anybody. Document
5 02-002, transitional CFSA. AC Burke swears that knowledge
6 of the types of investigations transitioned to CFSA may
7 render MPD investigations ineffective or circumvent
8 reporting of crimes. There is no content in the document,
9 which if known might interfere with investigations, or
10 circumvent reporting of crimes. The document is ordered
11 produced. Operational manuals, and here the Court just
12 wouldn't go along anymore with the gag that the documents
13 had been examined paragraph by paragraph, and line by line
14 for excluded content, and failing to, and turning over
15 redacted documents would produce unintelligible documents,
16 because it became clearer than the Court could abide that
17 no such review of these documents had occurred, and that
18 the District of Columbia was delegating to the Court the
19 duty that the District of Columbia has under law to review
20 these documents to find out what can be redacted and what
21 must be produced. This particular document internal
22 affairs operational manual is a 70-page document. It's
23 single-spaced. It has about 10-point type. So, for a
24 judge it's physically difficult to read, and for a judge
25 it's incredibly time consuming to read. Assistant Chief

1 of Police Burke swears each withheld record described
2 above was reviewed line by line. He swears that. It is
3 my conclusion that no portion of the order could be
4 released. The privilege and sensitive techniques,
5 procedures and information are inextricably dispersed
6 throughout the text. Redacting sensitive information
7 would result in a document with only a title followed by
8 unintelligible and/or meaningless fragments. The
9 substance of all of these records is exempt. I declare
10 under penalty of perjury that the true, that the foregoing
11 is true and correct. Well, the foregoing is not true and
12 correct. The foregoing is completely and obviously false.
13 So, let's look at the first page after these melodramatic
14 representations. The Office of Internal Affairs, OIA was
15 established as the qualify control mechanism for the
16 Metropolitan Police Department. Towards this end it is
17 imperative that this office maintains the highest level of
18 integrity and public trust, while ensuring that the agency
19 fulfills its obligation of excellence and superior police
20 service to the community. Falling under the purview of
21 the Internal Affairs Bureau, OPR the OIA is comprised of
22 four investigative units. Each of these components has a
23 specific focus and function that ensures the agencies
24 compliance with the standards rules, regulations,
25 policies, procedures, laws and statutes of the

1 Metropolitan Police Department and the District of
2 Columbia. The material presented herein is intended to
3 guide the reader to a greater understanding of the
4 history, philosophy, structure, concepts, policies,
5 procedures and operation of the Office of Internal
6 Affairs. This manual represents a new openness to
7 acknowledge the department's efforts at policing itself
8 and safeguarding the integrity of the agency. Clearly the
9 OIA is constantly evolving, is a constantly evolving
10 office that must remain fluid to address the ever-changing
11 landscape of law enforcement, and I return to AC Burke's
12 affidavit. Redacting sensitive information would result
13 in a document with only a title followed by unintelligible
14 and/or meaningless fragments. In the first 12 pages of
15 the document the Court found one paragraph within the
16 privilege, and the Court stopped reading after page 12
17 because it was crystal clear at that point that the
18 District had delegated its work to the Court. Now, the
19 Court could simply conclude that the District has not
20 carried its burden of proof because the District hasn't
21 provided the Court with specific information to work with,
22 and I could order that the document be released. Out of
23 concern for public safety the Court will not follow that
24 course, but will defer ruling on this document for five
25 days to give the District an opportunity to carry its

1 burden of proof by filing a supplement that does its job.
2 That refers to specific portions of the document that must
3 be redacted, and explains how release of those specific
4 portions may compromise investigations, or otherwise fall
5 within the law enforcement privilege. The only redacted
6 content that the Court found in the first 12 pages is page
7 six, second paragraph. That will not appear in my order,
8 so, you should write down page six, second paragraph, Mr.
9 Copeland. The next document seems not to have a specific
10 number. It's entitled Office of Professional
11 Responsibility, force investigation, team organizational
12 plan and operations manual. This document is 43 pages
13 long, and it is included in AC Burke's hyperbolic
14 representations as well, and I'm going to read the entire
15 first page, because I spent several hours doing the
16 District's job looking at every document paragraph by
17 paragraph, and line by line, when the District of Columbia
18 was the entity that had the legal duty to do that, but did
19 not do that. So, if I spent all those hours I guess it's
20 not too much of an imposition to extend what may be a very
21 tedious time for you by another three or four minutes to
22 read an entire page that of course can't be produced
23 because it would endanger law enforcement, or endanger the
24 public. Police departments everywhere have no greater
25 responsibility than to ensure that our officers who are

1 entrusted by the public to use force in the performance of
2 their duties, use that force prudently and appropriately,
3 and when deadly force is used police departments have a
4 solemn obligation to the public and the officers involved
5 to investigate these cases thoroughly, accurately and
6 expeditiously, Police Chief, Charles H. Ramsey. The
7 District of Columbia is a dynamic city that serves as a
8 symbol of freedom and democracy throughout the world. The
9 city also serves as a center of commerce both
10 internationally and regionally. Locally the city is home
11 to vibrant neighborhoods, commercial corridors, museums,
12 educational institutions and a plethora of other community
13 elements. The city stakeholders, which include residents,
14 visitors, government officials, businesses and others
15 employed here proudly contribute to the quality of life of
16 the District of Columbia. The Metropolitan Police
17 Department is also committed to enhancing the city's
18 quality of life through providing the highest level of
19 police service to these stakeholders. As the primary law
20 enforcement agency in the nation's capitol, our members
21 have taken seriously the obligation to provide police
22 service to our stakeholders. It is the mission of the
23 Metropolitan Police Department to prevent crime, and the
24 fear of crime as we work with others to build safe and
25 healthy communities throughout the District of Columbia.

1 One of the awesome responsibilities that our members are
2 entrusted with is the authority to use force, including
3 deadly force. In the past it had become clear that the
4 Metropolitan Police Department had not met community
5 expectations nor police industry standards as it related
6 to use of force, and subsequent use of force
7 investigations. As a result Chief of Police, Charles H.
8 Ramsey instituted a number of reforms to address major
9 aspects of the department's use of force, practices and
10 procedures. One of the Chief's primary initiatives
11 involved the establishment of an investigative body to
12 monitor and scrutinize the use of deadly force. This is
13 how the force investigation team came into existence in
14 January 1999. Again, I'm going to give the District five
15 days in which to carry its burden of proof to establish
16 that portions of this 43 page document fall within the law
17 enforcement privilege. The supplement that is filed must
18 refer to specific portions of the document and explain how
19 release of those specific portions may compromise
20 investigations, or otherwise fall within the law
21 enforcement privilege. The next document is homicide
22 investigation standard operating procedures. AC Burke
23 swears that the manual describes the specific
24 investigative steps and techniques employed in
25 investigating homicides and criminal cases where the

1 victim is not expected to survive. He swears that
2 knowledge of these investigative tactics could provide
3 individuals with access to information that may potential
4 harm on going future homicide investigations. This is a
5 19-page document, and again I'm going to read the first
6 page in its entirety. I think you've already experienced
7 that that's going to take like three minutes or so.
8 Standard operating procedures, procedural guidelines.
9 Beginning with the police call takers who initially take
10 the calls and obtains critical information to the first
11 responding officer, to the lead detective a complete
12 detailed practical and thorough investigation is based on
13 teamwork, cooperation, documentation and compliance with
14 basic crime scene and investigative procedures. To ensure
15 that all homicide cases and assault with intent to kill
16 cases where the victim may die, are thoroughly and
17 properly invested, the following standard operating
18 procedures shall be followed by all members involved
19 throughout the investigation. Note, it is understood that
20 certain circumstances may require a member to deviate from
21 a particular procedure. In such instances the member must
22 be able to provide a reasonable explanation. One, case
23 inception, A, Office of Unified Communications. In most
24 instances members of the communications division are the
25 initial call takers. In addition to dispatching the

1 appropriate units to the scene, it is incumbent that they
2 obtain all available information regarding the incident
3 from all callers and forward that information to the
4 appropriate investigative unit. Do not assume that all
5 callers for the same incident share the same information.
6 Question all callers for information related to the
7 incident regardless of if it is the same information given
8 by other callers. One, call takers, A, treat all callers
9 as if they're first and only caller. B, attempt to
10 identify all callers and obtain any information to assist
11 with future contact, ask the caller for their name. Do
12 not ask do you want to leave your name. C, obtain all
13 available information regarding a suspect to include name
14 or nickname, height, weight, build, hairstyle, clothing
15 description, vehicle description, license tag number,
16 direction of travel. Does this person live or hang in the
17 area? Anything that may assist in identifying the
18 suspects. D, ascertain if the caller witnessed the
19 incident. E, where applicable stay on the line with the
20 caller to obtain continuous information. F, notify
21 communication supervisor. G, if the caller is transferred
22 to the Fire Board dispatcher monitor the call and note any
23 additional information that the dispatcher should be
24 aware, or should pass on to officers and detectives.
25 There is absolutely no way that release of that

1 information could harm on going and future homicide
2 investigations. Again, the Government will be given five
3 days to review line by line, paragraph by paragraph this
4 19-page document, and file a supplementation referring the
5 Court's attention to specific information that actually
6 falls within the law enforcement privilege.

7 (Pause.)

8 THE COURT: There actually is a last document.
9 This is the last document that I'll describe. This last
10 document is youth and preventive services division
11 criminal investigations manual dated January 2002. This
12 manual is a mere 399 pages long, and yet according to AC
13 Burke there is not a single sentence, or a single
14 paragraph in this 399 page long document that would make
15 any sense after the redactions. First page, mission
16 statement. The family violence and child protection unit
17 of the youth and preventive services division, special
18 services command investigates all sexual and serious
19 physical child abuse cases in Washington, D.C. The unit
20 is responsible for protecting child victims and
21 apprehending and assisting in the prosecution of all
22 offenders who commit child abuse crimes. The unit is also
23 responsible for investigating all missing person cases of
24 children under the age of 18 years, as well as all
25 parental kidnapping. Paren, child victim much be under

1 16, close paren, cases that originate in Washington, D.C.
2 Policy. It is the policy of this department that
3 effective response to child abuse and child maltreatment
4 requires cooperative and coordinated efforts between our
5 department, the United States Attorney Office, the Office
6 of the Corporation Counsel, the Court, the Children's
7 Advocacy Center, Child and Family Services Agency,
8 Children's National Medical Center, and the District of
9 Columbia Public Schools. To this end the arrest and
10 criminal prosecution of offenders is an appropriate and
11 preferred approach to the problem of child abuse from a
12 preventive standpoint. Therefore all reports of child
13 abuse, missing persons and parental kidnappings shall be
14 thoroughly investigated in accordance with this policy,
15 and appropriate measures taken consistent with the laws of
16 the United States and the District of Columbia that will
17 best protect the interest of the child and bring offenders
18 to justice. Overview. This manual is to be used as a
19 standard operating procedure for the investigation of
20 child abuse. However, due to the nature of these
21 investigations and police work in general not every
22 conceivable situation can be addressed. This end when
23 confronted with situations beyond the scope of this guide
24 the investigator must rely on his/her knowledge and
25 experience, other investigators and his/her officials in

1 order to resolve the situation successfully. Well, I
2 think it's apparent by now that I had not accepted the
3 assignment to the Court to go line by line through this
4 399 page document concluding that it was actually the
5 burden of the District of Columbia with its burden of
6 proof to do that, but I did just turn to some random
7 pages. I turned to page 165, which is innocuous, and then
8 I turned to page 246, which actually expresses the law of
9 probable cause with respect to search warrants and more
10 generally, and then I looked at page 247, which actually
11 had some sensitive content. So, the District of Columbia
12 will be given the same five days to file a supplementation
13 that examines this document justifying what must be
14 withheld under law enforcement privilege. Now, that's the
15 entire ruling, and it's taken almost an hour and
16 three-quarters, and has actually not been heavy on
17 rationale, actually not. To be exhaustive with respect to
18 rationale would require much more time, and I am saying
19 this to you, that with respect to any item on this order,
20 whether from the Government's perspective or for the
21 plaintiff's perspective, there is a genuine need for
22 enhanced rationale. Please file a motion to reconsider,
23 or motion to amend the order, or something that asks the
24 Court for an enhanced rationale, did not do this lightly.
25 I have literally hundreds of cases, and literally hundreds

1 of motions and I don't want to do moot work. I'll do work
2 that's necessary. I don't want to moot work. If it's not
3 important don't ask for it, but if it's important ask for
4 it. I have reasons, but I can only give so much
5 information, and so there will be an order that will issue
6 promptly. There's a little bit of production work
7 associated with generating the order, not very much, and
8 it will issue soon. So, the Government has its
9 opportunity to file a supplement within five days. If it
10 doesn't file a supplement it will not have carried its
11 burden of proof and the documents will be ordered released
12 in their entirety. The supplement is to be viewed
13 in-camera. It's not a supplement that is shared with the
14 other side because it expresses rationale for the law
15 enforcement privilege. So, I'll either accept the
16 argumentation or I won't, and I'll issue a follow on
17 order, and I believe that that ends the case pending the
18 motions for reconsideration, or to amend the order. This
19 is not really an opportunity to invite counsel to speak.
20 It's an opportunity for me to express the Court's order,
21 but if there is some procedural content that needs
22 clarification I'll give counsel an opportunity. Mr.
23 Copeland do you have additional content?

24 MR. COPELAND: My only question, Your Honor, was
25 whether or not, in going through her description of the

1 orders, the Court indicated that for example one sentence,
2 or one paragraph in an order, in one case you identified
3 it was the second paragraph on page six, but in another
4 instance you said it was one sentence, and I wonder if
5 Your Honor would allow us to come in and review the,
6 perhaps the Court's copy, which sentence it was referring
7 to?

8 THE COURT: Well, let me ask you this. Did you
9 give me your, the, pardon me. You gave me two binders.

10 MR. COPELAND: Yes.

11 THE COURT: Do you have an exact duplicate of
12 those two binders?

13 MR. COPELAND: I did, Your Honor. We moved them
14 and --

15 THE COURT: Okay.

16 MR. COPELAND: -- I couldn't find them for
17 today. I can --

18 THE COURT: Okay. I, you may, if you need to,
19 examine my binders, if you need to do that. The most
20 important thing for me is review, and I'm not going to do
21 anything with respect to these documents for the next
22 several days. You gave me these exhibits. I'll give them
23 back to you right now.

24 MR. COPELAND: Thank you, Your Honor.

25 THE COURT: Okay.

1 MR. COPELAND: I'll return them --

2 THE COURT: Yes. That's all right. Okay.

3 MR. COPELAND: My other question, Your Honor,
4 was just what Your Honor's timeframe for producing on this
5 material. Certainly we want to do it quickly, especially
6 in light of how we got to this point, and I just wondered
7 if Your Honor had a deadline that she would like us to
8 comply by.

9 THE COURT: Well, I've been saying five business
10 days --

11 MR. COPELAND: Okay.

12 THE COURT: -- because I think that's
13 appropriate.

14 MR. COPELAND: Certainly.

15 THE COURT: Now, one of those documents is 400
16 pages long and it requires a line-by-line examination. If
17 you need more than five business days tell me, and I'll
18 enunciate 10 business days. I don't know, what do you
19 want?

20 MR. COPELAND: I meant for purposes of the ones
21 that Your Honor has outlined which redactions are
22 appropriate to provide them --

23 THE COURT: Oh, okay. You're right. My order
24 doesn't speak in terms of how much time. I will say,
25 well, how much time do you reasonably need, two weeks?

1 MR. COPELAND: Two weeks.

2 THE COURT: All right. Yes, so I'll add two
3 weeks to the order. I didn't really state a time. I have
4 granted the plaintiffs' request for attorney's fees and
5 costs. Plaintiff shall have until March the 30th, 2012 to
6 submit an affidavit of costs and fees and a memorandum in
7 support of the affidavit. The District of Columbia shall
8 have until April 27th, 2012 to file an opposition. Mr.
9 Copeland, you apologized accurately and sincerely. I
10 don't think anybody goes through life without making
11 mistakes. I dare say most lawyers go through life without
12 making your mistake this time, but all I think anybody can
13 ask in the context like this, is that you not be
14 defensive, you recognize that you make a mistake, and you
15 say to yourself that's never going to happen again, and
16 then it never happens again. All right.

17 MR. COPELAND: Thank you, Your Honor.

18 THE COURT: All right. All right, so anything
19 else of a procedural nature?

20 MR. MESSINEO: Strictly procedural and I would
21 request if possible so that there is no mishandling or
22 miscommunication that on the date by which Your Honor has
23 ordered the production of the materials to be produced to
24 the plaintiff, that we be able to physically just pick
25 them up over at the OAG and that would be acceptable by

1 us.

2 THE COURT: Okay, well that sounds more
3 convenient. That sounds more convenient for the District.

4 MR. MESSINEO: Right.

5 THE COURT: So, just talk to each other and
6 arrive at something sensible. Okay. Thank you all.

7 (Thereupon the hearing was concluded.)

√ Digitally signed by Tami Pare

ELECTRONIC CERTIFICATE

I, Tami Pare, transcriber, do hereby certify that I have transcribed the proceedings had and the testimony adduced in the case of PARTNERSHIP FOR CIVIL JUSTICE FUND V. DISTRICT OF COLUMBIA, Case No. CAB-748-09 in said Court, on the 9th day of March 2012.

I further certify that the foregoing 54 pages constitute the official transcript of said proceedings as transcribed from audio recording to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 13th day of March 2012.

Tami Pare

Transcriber