

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

MARC FRUCHT)	Civil Action No.
)	
and)	Jury Trial Demanded
)	
SEAN TAFT-MORALES)	
by and through his next friend,)	
HUGH TAFT-MORALES)	
)	
v.)	
)	
DISTRICT OF COLUMBIA)	
)	
and)	
)	
JOHN/JANE DOES 1 - 20)	
)	
Defendants.)	
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COMPLAINT

(First Amendment - Unlawful Police Misconduct to Retaliate Against and Chill Protest Activity; Fourth Amendment - Excessive Force and Wrongful Arrest; Assault and Battery; Negligence)

OVERVIEW

1. This action seeks declaratory relief, injunctive relief and damages to remedy policies and customs of the District of Columbia Metropolitan Police Department (“MPD”) that violate the rights of Plaintiffs and others engaging in expressive and associational activities.

2. This litigation challenges the MPD’s use of tactics of disruption and force to retaliate against and chill targeted protest activity, including the use of motorcycles and bicycles as weapons, the use of lines of police (including on motorcycles and bicycles) to prevent

protestors from leaving the march and others from joining the march, and the use of violence, disruption and intimidation tactics against demonstrators including the use of the “rush tactic” whereby police officers directly rush and assault assembled protestors.

3. Among other things, Plaintiffs seek an injunction prohibiting the MPD from using their motorcycles and bicycles to flank pedestrian marches and as police lines to prevent people from entering or exiting permitted marches and assemblies while in progress, using motorcycles and bicycles as weapons, and from driving their motorcycles and bicycles through, and using the rush tactic against, marches and assemblies causing and risking intimidation and injury to lawfully assembled activists.
4. Plaintiffs bring this action under 42 U.S.C. § 1983, the First and Fourth Amendments to the United States Constitution, and the laws of the District of Columbia.

JURISDICTION AND VENUE

5. This Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343(a)(3) and (4) (civil rights jurisdiction), and 28 U.S.C. § 1367 (supplemental jurisdiction).
6. Venue is appropriately vested in this Court pursuant to 28 U.S.C. § 1391, as the District of Columbia is a judicial district in which the defendant resides, and, independently because a substantial part of the acts or omissions giving rise to the claims herein occurred in the District of Columbia.

PARTIES

7. Plaintiff MARK FRUCHT is a resident of Wisconsin. He was assaulted without cause

and wrongfully arrested by multiple officers of the Metropolitan Police Department, and suffered injuries described herein.

8. Plaintiff SEAN TAFT-MORALES is a resident of Maryland. He was assaulted and pushed and caused to suffer physical injury by the wrongful conduct of Metropolitan Police Department officers, as described herein. HUGH TAFT-MORALES is the next friend and father of SEAN TAFT-MORALES, who is a minor.
9. Defendant DISTRICT OF COLUMBIA is a municipal corporation and constitutes the local government of Washington, D.C.
10. Defendant JANE/JOHN DOES 1 - 20 are individuals who perpetrated the acts described herein and are, on information and belief, Metropolitan Police Department officers. These defendants are sued in their individual capacities.

FACTS

11. On April 12, 2003, the D.C. Metropolitan Police Department once again deployed its Civil Disturbance Units to disrupt political protest in the Washington, D.C.; and to retaliate through actual and threatened force against those who engaged in lawful civil dissent against the Government's war program and policies.
12. Thirty thousand people had assembled on this day for the first significant Washington, D.C. anti-war demonstration after the conquering of Baghdad. The demonstration, calling to "End the Occupation of Iraq and Bring the Troops Home Now" and stating "Occupation is not Liberation," was a permitted event. The demonstration organizers, the A.N.S.W.E.R. Coalition (Act Now to Stop War & End Racism) had sought and obtained permits for both the rally and the march route to encourage the largest number of people

to come, as informing the public that the event is permitted provides some measure of comfort to many who would like to bring their families, and indeed a large number of families did come, including small children.

13. Despite having complied with the government's permitting demands and obligations, the demonstration was met by blue blocs of uniformed police - - some of whom masked their identities by failing to visibly display their nameplates and by wearing badges that had the identifying badge numbers punched out - - who repeatedly used force to disrupt the permitted march and to retaliate against the anti-war protestors. The police were deployed in a massive presence calculated to intimidate.
14. Throughout the march, and not in response to any exigency, police used their motorcycles and bicycles as weapons and drove recklessly *against, into and through the march*. Blocs of police charged into the march, striking protestors for no reason with batons and fists. At times, the police assaulted protestors in this manner, ostensibly prohibiting them from stepping off of the street march route and preventing traverse upon the sidewalk. At other times, the police assaulted protestors in this manner, ostensibly prohibiting them from stepping onto their permitted street march route and forcing them onto the sidewalk. At other moments, police used the rush tactic and entered into the middle of the peaceful, spirited and forward moving march, establishing blue islands of violence within the march itself, arbitrarily striking demonstrators.
15. Also throughout the march, *moving* motorcycle and bicycle police flanked the sides of march. With the motorcycles and bicycles on the march route itself, police used their cycles to ram into protestors and to prevent marchers from exiting the march and

onlookers from joining the march. The motorcycles and bicycles rode on the march route itself, creating an ever present threat of force against pedestrian demonstrators. They used the motorcycles and bicycles as weapons, intentionally steering them to ram or threaten to ram protestors who marched *on their permitted march route*.

16. These acts of lawlessness by the police were not isolated incidents towards protestors. The District of Columbia, at its highest levels of authority, had already engaged in a pattern of widespread violations of protestors' constitutional rights, including specifically the tolerance or encouragement of unlawful use of force and other First and Fourth Amendment violations. Such widespread violations were conducted and approved at the highest levels of government including in connection with the April, 2000 IMF/World Bank protests, the January, 2001 Inauguration, and the April, 2002 anti-war protests.
17. This practice of tolerating violations of protestors' rights was manifest on April 12, 2003, as evidenced by the pervasive nature of the police use of motorcycles and bicycles to literally drive through the march pushing startled or injured protestors to the side, or as a vehicle of force against protestors on the sides of the march who were peaceably standing upon and marching along the very street for which organizers had been issued a permit, as well as by the frequent and arbitrary and retaliatory use of force and tactics of disruption against the march, including the rush tactic to assault assembled persons engaging in First Amendment protected activity.
18. Plaintiff MARK FRUCHT was a protestor.
19. FRUCHT witnessed the police engaged in what appeared to be forceful conduct against a demonstrator.

20. FRUCHT was carrying a camera and tried to take a photograph of the police conduct. An officer yelled “Get the fuck out of here.” Immediately or contemporaneously, multiple police jumped upon FRUCHT.
21. An officer pushed FRUCHT’s face to the ground. Other officers were on top of him. He was not resistant, yet another twisted his left leg and another beat him in his left thigh.
22. While FRUCHT was held on the ground by MPD officers, an MPD officer with force and violence began striking FRUCHT in the head with a nightstick. He did it over and over again, causing FRUCHT to suffer physical injury.
23. FRUCHT was wrongfully arrested for “failure to obey” an officer.
24. FRUCHT did not fail to obey a lawfully given police order.
25. FRUCHT had not violated any law.
26. There was not probable cause to arrest FRUCHT.
27. There was not justification or excuse to beat FRUCHT.
28. Some time thereafter, FRUCHT was taken to a jail cell and left there. While in pain and in the jail in custody, FRUCHT was questioned by MPD officials about his beating. He was then left in his jail cell again.
29. FRUCHT, a Catholic worker and non-violent political activist, was later taken to the hospital in handcuffs for treatment of his police inflicted injuries.
30. Plaintiff SEAN TAFT-MORALES, a high school student, was also a protestor.
31. At approximately 9th & G Streets, N.W., police on foot and cycle assaulted the march. Police attacked the crowd violently forcing the crowd to compress. TAFT-MORALES was pushed into one of the ever-present lines of bicycle police, which were located on the

permitted march route, and which formed an uncrossable obstacle and barrier to dispersal. The police were pushing and striking the demonstrators from both sides using clubs and fists. Demonstrators were simultaneously smashed into the bicycle line while a police officer ordered TAFT-MORALES to disperse notwithstanding the bike line that physically prevented dispersal and was pushing him in the opposite direction.

32. The police force used violence and, upon information and belief, chemical agents, against the lawful anti-war marchers at this location.
33. TAFT-MORALES was pushed and fell on top of a police bicycle which was then laying on the march route. As a consequence of this police assault, others were pushed or fell upon TAFT-MORALES.
34. TAFT-MORALES suffered injury to his knee. He came to the attention of medics and was thereafter pulled to the side with another injured protestor who had a bloodied eye.
35. Volunteer medics sought to place TAFT-MORALES' knee into a splint. As he was being treated in this manner, an MPD police officer approached, took out his baton, and ordered that they "Get out of here now."
36. The medics protested, repeatedly stating that it was a medical emergency.
37. The officer began to count down from three, and raised the baton threatening to strike.
38. TAFT MORALES was thereafter unable to walk or stand. He was assisted by a fellow protestor to a bench approximately 40 to 50 feet away, where medics resumed placing the makeshift splint onto his knee.
39. TAFT MORALES was taken by ambulance to Georgetown University and diagnosed with a dislocated kneecap.

40. The police misconduct charged herein is sufficiently harmful and threatening as to chill or silence a person of ordinary firmness from future First Amendment activities.
41. Those who oppose the government's war policies through political dissent and lawful assembly, including through the time-honored tradition of marches, should not have to suffer or risk physical violence, retaliation or disruption from the government. The unjustified and massive display of paramilitarized force, the placement of moving police lines along the flank of the march and between protestors and those bystanders and onlookers with whom they wished to communicate, and the actual use of force harms plaintiffs' ability to engage in protected free speech activities.
42. Plaintiffs suffered monetary and non-monetary harm, including pain and suffering, and loss of their constitutional rights to engage in free speech and political association without police excessive force, retaliation and disruption.

Unconstitutional Policies of the MPD

43. The MPD and its "Civil Disturbance Units," maintain the policy, practice and/or custom of abusing their state authority to disturb and disrupt targeted civil political assembly and mass demonstration activity.
44. The MPD and its CDUs maintain the policy, practice and/or custom of deploying police lines or blocs of police where circumstances do not justify such deployment and for the purpose of disrupting and intimidating First Amendment protected assembly, speech and petition activities.
45. The MPD and its CDU's employ a tactic known as the "rush tactic."
46. Prior and subsequent to the events at issue herein, a pattern and practice of

unconstitutional violations of protestors' constitutional rights had been established and revealed, including that the MPD engaged in mass violations of protestors' First and Fourth Amendment rights in connection with the April, 2000 IMF/World Bank protests, the January, 2001 Inaugural protests, April, 2002 anti-war protests and the September 27, 2002 anti-war demonstrations. These constitutional violations constitute the affirmative policy, practice or custom of the District of Columbia and its policy makers.

47. Additionally, and in the alternative, the District of Columbia and its policy makers acquiesced, encouraged, approved of, and/or ratified such unconstitutional policies, practices and customs. The failure to intervene to correct these circumstances constituted deliberate indifference, and caused the harms complained of in the complaint herein.
48. Additionally, and in the alternative, this unconstitutional course of conduct was the consequence of the District's failure to properly train its officers. There was a manifest need for proper training in the particular area of police interventions against protest activity, and there existed a significant risk of harm in the absence of adequate and effective training. This failure to train constituted deliberate indifference to the rights of citizens and demonstrators.
49. The District of Columbia has explicitly, impliedly or tacitly authorized, approved or encouraged the unconstitutional conduct challenged herein.
50. The above-referenced policies and customs, and also the failure to properly train its officers, constitute deliberate indifference on the part of policymakers of the District of Columbia to the constitutional rights of protestors in Washington, D.C., as well as all those who would associate with such protestors or report on them as media.

51. The actions of the above-referenced defendants violated the following clearly established and well settled federal constitutional rights:
- a. Freedom from the unreasonable seizure of one's person;
 - b. Freedom from government disruption of, interference with, or retaliation for, engagement in free speech, assembly, association, and petition activities.
52. As a direct and proximate result of the acts or omissions of the defendants identified in this complaint and the other unidentified agents and agencies acting jointly, each of the plaintiffs has suffered monetary and non-monetary harm including deprivation of constitutional rights under the First and Fourth Amendments to the U.S. Constitution, as well as physical harm, emotional pain and suffering.

COUNT I

(First Amendment and Fourth Amendment; assault and battery)

53. Paragraphs 1 - 47 are incorporated by reference as if set forth herein.
54. Defendants' actions in deploying law enforcement units to disrupt First Amendment protected activity and subjecting plaintiffs to excessive force violated the Fourth Amendment rights of those individuals subjected to excessive force, and violated the First Amendment rights of the aforementioned plaintiffs. Such conduct further constituted assault and battery under the laws of the District of Columbia.
55. The acts complained of herein were directed toward intimidating Plaintiffs and their fellow protestors, chilling the exercise of these protective expressive rights by, among other means, using motorcycles and bicycles as weapons against protestors, using the rush tactic against assembled protestors, and deterring persons from joining with plaintiffs in

the lawful exercise of their rights.

56. Claims are advanced pursuant to this Count against the District of Columbia and the unidentified officers who caused the harms encompassed by the count.

COUNT II

(Wrongful and false arrest)

57. The warrantless arrest of plaintiff FRUCHT was unlawful.
58. There was no probable cause to arrest FRUCHT.
59. Defendants' actions in causing the arrest of FRUCHT violated his clearly established Fourth Amendment right to be free of unreasonable seizures, his First Amendment right to be able to engage in free speech activities - - or to lawfully photograph the apparent police disruption of such activities, and violated rights arising under the law of the District of Columbia to be free of false arrest or false imprisonment.
60. Claims pursuant to this count are advanced against the District of Columbia and the unidentified officers causing his arrest.

Count III

(Injunctive Relief)

61. Plaintiffs intend to engage in free speech activities in the future.
62. The use of motorcycles and bicycles and the use of the rush tactic against persons engaged in First Amendment protected activity as described herein, the tolerance of excessive force and arbitrary violations of the Fourth Amendment, and the intentional intimidation and disruption tactics of the MPD are calculated to, and in fact do, interfere with First Amendment protected expression.

63. There is an actual controversy now existing between plaintiffs and defendants concerning the official policies and customs that may be used by the District of Columbia against political marches and demonstrations. Plaintiffs seek a judicial determination of their rights and duties and a declaration as to Defendants' obligations.

Count IV

(Negligence)

64. Defendants owed plaintiffs a duty of care in their conduct, such that they would not foreseeably cause plaintiffs to suffer injury, including specifically dangerous physical injury. Defendants failed to exercise due care in their conduct, thereby negligently causing the harm complained of herein.

WHEREFORE, Plaintiffs request the following relief:

A. Compensatory damages against the District of Columbia for violations of federal rights pursuant to 42 U.S.C. § 1983, in an amount appropriate to the proof adduced at trial;

B. Compensatory and punitive damages against the unknown individual District of Columbia defendants sued in their individual capacities, for violations of federal rights, pursuant to 42 U.S.C. § 1983, in an amount appropriate to the proof adduced at trial;

C. Compensatory damages against the District of Columbia defendants sued in their individual capacities, for violations of common law rights, in an amount appropriate to the proof adduced at trial;

D. Compensatory damages against the District of Columbia, for violations of common law rights, pursuant to *respondeat superior*, in an amount appropriate to the proof adduced at trial;

- E. Injunctive and declaratory relief against unconstitutional and unlawful conduct;
- F. Reasonable attorneys fees and costs; and
- G. Any other relief deemed just and appropriate by the Court.

Respectfully submitted,

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