

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

JEFFREY BARHAM, *et al.*,

Plaintiffs,

v.

CHARLES H. RAMSEY, *et al.*,

Defendants.

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: Civ. Action No. 02-02283 (EGS) (AK)
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**DEFENDANT CHIEF CHARLES H. RAMSEY'S FILING
CONCERNING THE RECORD ON HIS SUMMARY JUDGMENT
MOTION REGARDING ARRESTS AT VERMONT AND K STREETS**

Defendant, Chief Charles H. Ramsey, respectfully submits this filing concerning the record upon which his Motion For Summary Judgment Upon Claims Subject To Qualified Immunity ("Motion") was based and argued. Chief Ramsey, through his counsel, has reviewed this Court's Memorandum Decision, dated September 24, 2004, granting, in part, and denying, in part, Chief Ramsey's Motion and the transcript of the oral argument regarding that Motion heard by this Court on June 14, 2004.

Chief Ramsey has determined that some statements of his counsel at that hearing were less than models of clarity. The Court's September 24, 2004 Memorandum Decision reflects, at 38, that this Court credited the representations of Chief Ramsey's counsel concerning Chief Ramsey's involvement in arrests made at Vermont and K Streets, N.W., on September 27, 2002, in granting Chief Ramsey qualified immunity regarding those arrests. Chief Ramsey believes that the Court properly decided that issue. However, in his view, the record of the oral argument is sufficiently ambiguous that his counsel's representations may have been understood to assert facts other than

those Chief Ramsey understands to be accurate. Accordingly, Chief Ramsey submits this filing in order that this Court's decision not be based upon an ambiguity, misunderstanding, or miscommunication. In doing so, Chief Ramsey understands that this filing may cause the Court to review or reconsider, *sua sponte*, its own ruling regarding his entitlement to qualified immunity for the Vermont and K Streets arrests.

In granting Chief Ramsey qualified immunity regarding the arrests made at Vermont and K Streets, N.W., the Court made the following observation:

Simply stated, there is no record evidence that Chief Ramsey was on the scene of Vermont and K Streets at the time of the arrest, and the Court accepts Chief Ramsey's assertion through counsel, that Chief Ramsey was not present. Tr. 4/6/04 at 39. Further, unlike the arrests in Pershing Park, there is no record evidence suggesting that Chief Ramsey in any way approved the Vermont and K Streets arrests. Given that Chief Ramsey did not actively participate in the arrests, he could only be held personally liable on a theory of failure to supervise Assistant Chief Jordan. As discussed, *supra*, however, a "supervisor who merely fails to detect and prevent a subordinate's misconduct . . . cannot be liable for that misconduct." *International Action Center*, 365 F.3d at 28.

Memorandum Decision at 37-38. Chief Ramsey understands the Court's analysis to be based, in part, upon the representations of his counsel to the Court, as reflected at pages 38-43. Fair readings of the transcript and the Memorandum Decision permit the inference that the record reflected and the Court understood that Chief Ramsey was not present at Vermont and K Streets at any point related to the arrests there. That would not be correct.

As reflected in the transcript, at 41: 4-6, Chief Ramsey went from point to point throughout the District on the morning of September 27, 2002, and did make observations and did have conversations at various locations. Chief Ramsey recalls having briefly been at Vermont and K Streets, that morning. However, he has no

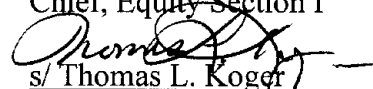
recollection of having had any conversation with Assistant Chief Jordan at that location or of observing arrests there. Chief Jordan has no recollection of having seen Chief Ramsey at Vermont and K Streets that morning, much less consulting with Chief Ramsey, at all, regarding Chief Jordan's decision to make the arrests at Vermont and K Streets. This is wholly consistent with the declaration of Assistant Chief Jordan submitted in support of the Motion. Further, this is entirely consistent with the Court's findings of "no record evidence suggesting that Chief Ramsey in any way approved the Vermont and K arrests," or that Chief Ramsey actively participated in any way in those arrests. *See Memorandum Decision at 38.*

Respectfully submitted,

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