IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL GRAVES	:	
Plaintiff	:	
	:	
v.	:	**Civil Action No. 01-308**
	:	
CITY OF PHILADELPHIA,	:	**JURY TRIAL DEMANDED**
DEPUTY COMMISSIONER	:	
SYLVESTER JOHNSON	:	
Defendants	:	

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR LEAVE TO TAKE DEPOSITIONS OF COUNSEL

I. Introduction

Defendants' Motion For Leave to Depose Six Lawyers, including counsel of record in this case is frivolous and should be summarily denied. First, the Motion is based on materially false factual representations, innuendo, and unsubstantiated charges of criminal conduct on the part of plaintiff's counsel. Defendants claim that plaintiff's counsel were part of a criminal conspiracy to obstruct justice, actively participated in preparations for illegal protest activities, and were at the "heart" of a conspiracy to train and prepare large numbers of people to engage in civil disobedience and disrupt the system from inside the City's jails. *Not one* of these assertions is supported by the record.

Second, the requested depositions seek information that is irrelevant to this litigation. Plaintiff claims false arrest and prolonged pre-arraignment detention. On the false arrest claim, the only relevant facts are what defendant Johnson knew with respect to any alleged illegal activities of the plaintiff. Information discovered post-arrest is irrelevant. With respect to the lengthy pre-arraignment detention, there has been no showing that counsel have any relevant,

non-privileged, or non-cumulative information.

Third, the Motion is made beyond the date set by the Court for completion of discovery. On October 2, 2001, United States Magistrate Judge M. Faith Angell extended the discovery deadline to November 16, 2001, but limited depositions to persons served with a subpoena prior to October 2, 2001. Exhibit 6, at 5.[1] The four lawyers defendants seek to depose who are not trial counsel (Epstein, Krasner, Erba and Hetznecker) were not served with a subpoena by October 2, 2001 and therefore were not subject to deposition. For counsel of record, Paul Messing and David Rudovsky, the defendants had until November 16, 2001 to seek court approval for the depositions. No such request was made. This Court, by Order of November 9, 2001, allowed for a request for additional discovery only with "justification stated" in the pretrial memorandum. (Para. 1 of Order). The defendants have failed to provide any justification for additional discovery.[2]

II. Argument

A. Defendants' Request is Based Upon Deliberate and Materially False Representations of Unlawful Conduct on the Part of Counsel of Record

There can be no mistaking the essence of defendants' claims: plaintiff's counsel, Paul Messing and David Rudovsky, have engaged in a criminal conspiracy to obstruct justice. According to defendants, plaintiff's counsel first illicitly secured the City's approval to act as "intermediaries" between the City and protesters on the false promise that counsel would seek to

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[1]Unless otherwise noted, "Exhibit" refers to Defendants' Exhibits.

[2]Given the unsupported nature of the charges made by the City against plaintiff's counsel, we will request the Court to consider appropriate sanctions.

limit the disruption that would be caused by certain tactics, including jail solidarity. Thereafter, having achieved access to jails and other sources of information by means of this deception, counsel participated in the very conduct that they had assured the City they would try to counter. One would expect that a party making this kind of claim–perhaps the most serious practice-related charge that could be leveled against a lawyer–would have facts and evidence to support the allegations. To the contrary, defendants' attack is based entirely upon innuendo, speculation, and outright misrepresentations.

We turn to the record to examine the "evidence" that is offered in support of the claims that counsel has trained, directed and assisted protesters in illegal activities and, as *active participants* in preparations for . . . illegal protest activities," were at *"the heart"* of a broad criminal conspiracy. MD at 3, 1 (emphasis added). We ask the Court's indulgence in this process, since it is essential to examine each of the citations to the record to demonstrate the total lack of substance of the claims.[3]

1. *"Plaintiff's lawyers ostensibly help[ed] the City prepare to respond to the protests." (MD, at 8).*

The City charges that counsel gained entry to negotiations and to the City's prisons and jails by promising to act as "intermediaries" between the City and the protesters with the objective of minimizing the incidents of disruption and obstruction of processing of persons arrested at the RNC. This charge is made in both the Motion for Depositions ("MD") and the Motion for Summary Judgment ("MSJ"). Defendants are explicit: plaintiff's counsel "purported

[3]For the convenience of the Court, we attach a Table of Misrepresentations that are discussed in this Memorandum of Law. See Plaintiff's Exhibit A.

to agree to help the City avoid the expected delays that would be caused by the practice of jail solidarity." MSJ, at 12. "These lawyers agreed to go into the jails and attempt to convince arrestees to give their names and otherwise cooperate with the authorities." Id. In support of these false claims, defendants cite to four sets of exhibits. MD, 7-8; MSJ, 12. Examination of these exhibits reveals no evidence that supports the charges.

(a) MD, Exhibit 17. Inspector Kahlbach testified that Mr. Messing (along with counsel for defendants, David Wolfsohn) were taken on a tour of Holmesburg Prison which had been designated as a holding facility for summary arrests. Exhibit 17, at 97-99. There is no testimony concerning an "intermediary role."

(b) MD, Exhibit 16. The deposition of John Gallagher is equally far off the mark. In the referenced sections, Mr. Gallagher describes his association with Mr. Presser, Mr. Messing and Mr. Rudovsky in dealing with the Police Department's disciplinary system when Commissioner Timoney took office in 1998. Mr. Gallagher was referring to the monitoring of a consent decree in a completely different matter, NAACP v. City of Philadelphia, C.A. No. 96-6045 (Dalzell, J.). Mr. Gallagher's testimony provides no support for the claim that counsel engaged in suterfuge by agreeing to act as intermediaries at the RNC.

(c) MD, Exhibit 13. Defendants cite to a Press Release dated August 7, 2000 in which a third party, R2K Legal, states that counsel had "been in regular dialogue with the City" prior to the RNC. Once again, this statement provides no support for the charges. Counsel's "dialogue" with the City regarding the RNC consisted of representation of clients and planning for the legal process that would be followed in the likely event of protest-related arrests. Counsel filed suit against the City to enjoin enforcement of its unconstitutional agreement with the Republican

National Committee that gave the RNC veto power over where protests could be held throughout the City of Philadelphia. See Unity 2000 v. City of Philadelphia, C.A. No. 00-1790 (Fullam, J.). The City agreed to settle the First Amendment claim by providing Unity 2000 (a coalition of political advocacy groups) a permit for their lawful demonstration on July 30, 2000 (where puppets and floats were prominently featured). Thereafter, there were other contacts between counsel and the City over such subjects as the plan to use Holmesburg Prison. The City presents no evidence that any of these discussions involved a plan to act as intermediaries or to try to convince arrestees to act in any particular fashion.

(d) MD, Exhibits 18, 19. There were discussions among Jules Epstein, Esq., the City, and the courts regarding the provision of lawyers for persons arrested on summary offenses. MD, Exhibits 18 and 19 (letters from Jules Epstein to Hon. Louis Presenza and Bradford Richman regarding the role of volunteer lawyers for representation on summary offenses). These letters discuss volunteer representation; there is not a single word suggesting that plaintiff's counsel or any lawyers would act as intermediaries or would try to convince clients to cooperate with the system.

In sum, there is not a shred of evidence in the exhibits referenced by the City that plaintiff's counsel deceived the City into believing that counsel would try to convince protesters not to engage in or disruptive activities. We freely admit to suing the City to vindicate our clients' first amendment rights (Unity 2000), to raising questions concerning the constitutionality of using a prison that had been closed down because of deplorable conditions as a detention center, to volunteering to represent persons arrested in summary proceedings, and to seeking information about how the City intended to hold and process persons who were arrested as a

result of RNC protests. It is only through warped vision that those functions could be considered evidence of engagement in a criminal conspiracy.

2. "Plaintiff's lawyers prepared activists to get arrested," "planned for jail solidarity, and, perhaps, helped inmates engage in it." MD, 6.9.

According to the City, the second prong of counsel's nefarious scheme was to train, direct, and assist protesters to commit criminal acts and, thereafter, to disrupt the operations of the jails and the arraignment process. As the charges become more serious, the gap between the allegations and reality widens even more.

In support of the claim that "plaintiffs' lawyers prepared activists to get arrested," MD, at 6, defendants assert that some protesters at the RNC had planned to engage in civil disobedience and, if arrested, that some of these protesters would engage in jail solidarity.[4] Of course, nothing in this claim implicates plaintiff's counsel. Defendants then assert that counsel "were deeply involved in some or more of these (sic) planning for these events," MD, at 7. Once again, reference to the exhibits shows that the proof is non-existent.

(a) MD, Exhibit 12-14. Defendants cite to a R2K Legal website, posted on September 27, 2000, almost two months after the arrests of August 1, listing Messrs. Epstein, Erba, and Rudovsky as lawyers who "have been working with the collective," but who were not part of the R2K's legal strategy group. MD, Exhibit 12. Defendants also cite to the August 7 press release

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[4]Jail solidarity is a tactic used by some protesters to present a united front in the pre-arraignment process in the hope of securing lesser charges or release on bail. Thus, some protesters might agree to withhold their names or other information with the hope of clogging the system, unless there was an agreement on the part of the prosecutors not to single out individuals for harsher charges or higher bail. Exhibit 14, at 152-53. See also Deposition of Dr. Charles Sisson, at 71(Exhibit B)("jail solidarity" is the "refusal to cooperate in jail" according to attorney David Wolfsohn).

which lists counsel as part of a "legal defense committee," MD, Exhibit 13, and testimony from a third party, Jody Dodd, that attorneys Hetznecker, Krasner and Rudovsky were lawyer "volunteers." MD, Exhibit 14. None of this information is new and none of it begins to prove that plaintiff's counsel were part of a criminal conspiracy. After the arrests, David Rudovsky and Paul Messing (who is not listed in any of these exhibits) undertook representation of some of the persons arrested. Thereafter, to coordinate defenses and preparation for hearings and trials of almost 400 criminal defendants, they consulted with other lawyers and the R2K legal team. Only if one accepts the proposition that a lawyer who agrees to represent a client and works with other lawyers and lay advocates on their behalf could not do so without having participated in their clients' alleged criminal acts, can one assert, as defendants blithely do here, that counsel was part of a criminal conspiracy.[5]

(b) MD Exhibits 14 and 15. In a sleight of hand, the City attempts to prove that Mr. Rudovsky and Mr. Messing "prepared activists to get arrested," MD at 6, by referencing two depositions that describe meetings of R2K Legal prior to the RNC. Additionally, defendants claim that Messrs. Erba, Krasner and Hetznecker attended meetings to "formulate strategies . . .

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[5]We wish to make clear that even if counsel had worked with, represented, or otherwise provided legal advice to R2K or any of the protesters prior to the arrests, such conduct would be fully protected under the First and Sixth Amendments. See, e.g., NAACP v. Button, 371 U.S. 415 (1963); In re Primus, 436 U.S. 412 (1978).

Indeed, such representation would be proper even if protesters asked advice about the legality or likely effectiveness of tactics (e.g., civil disobedience), the consequences of their actions (e.g., likely charges, bail), or group decision-making and jail solidarity. Nor is there anything illegal or unethical in representing a client who engages in what may be obstructionist tactics.

and train . . . participants in the legal aspects of direct action and jail solidarity." Memorandum, at 8.[6] We invite the Court's close attention to the City's allegations and the actual testimony provided. First, defendants allege that Bradley Bridge testified that attorneys Erba, Krasner and Hetznecker were at a meeting at which "the term jail solidarity was used." MD, at 8. Putting aside the fact that the presence of these lawyers would not implicate plaintiff's counsel (who were not present), Mr. Bridge testified that while he heard the term "jail solidarity," he was there to provide "legal advice" and inform persons of "their rights" to dissent, assembly and protest. MD, Exhibit 15 at 19-20.

Defendants then engage in a further blatant misrepresentation of the record. Defendants claim that "a handbook on jail solidarity tactics was drafted or negotiated at meetings of members of the legal team attended by Mr. Erba and others." MD, at 8 (emphasis added). In support, defendants cite the deposition of Jody Dodds. Exhibit 14. Ms. Dodds stated that a description of jail solidarity had been drafted by a group known as PDAG (Philadelphia Direct Action Group) and not R2K legal. The author is not identified and Ms. Dodd made it clear that at a meeting at which it was discussed, the only lawyer that she could recall as being present was Roy Zipris (not one of the lawyers defendants seek to depose). Defendants do not mention that Mr. Zipris opposed the use of jail solidarity tactics and that Ms. Dodds had no recollection of anyone defending the tactic except a person identified as Marina Sitrin. Id. at 155-56. Thus, defendants' claim that Mr. Erba was at this meeting is false and, in any event, would not support the claim that "plaintiff's lawyers [Rudovsky and Messing] prepared activists to get arrested . .

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[6]The Court will note the absence here as well as in every other document of any attendance by plaintiff's counsel at any R2K legal meeting prior to the arrests of August 1, 2000.

." MD, at 6.[7]

The next charge is that "plaintiff's lawyers planned for jail solidarity and, perhaps helped inmates engage in it." MD, at 9. But defendants present evidence that shows only that R2K Legal made plans to represent and support people who engaged in jail solidarity. Thus, at a point where many of the arrestees would not provide their names, R2K attempted to secure legal representation for these and others who had been arrested. There is no dispute that R2K made it clear before the RNC that it would attempt to secure lawyers to represent persons who were arrested.[8]

The defendants then attempt an impossible leap of [il]logic: because R2K was securing lawyers to represent persons arrested, "some or all of the attorneys gave active support to the protesters' use of 'jail solidarity,'" MD, at 10, and *plaintiff's lawyers planned for solidarity . . . . MD, at 9 (emphasis added).* Once again, defendants equate legal representation with participation in a criminal conspiracy. Yet the exhibits cited in support of this claim do not mention Messrs. Messing or Rudovsky in any communication related to jail solidarity or other tactics. Moreover, the statements of third parties as to their impressions of what *other* lawyers would do (with no showing that the third parties even received this information from the lawyers

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[7]The simple truth, as reflected by the discovery in this case, is that plaintiff's counsel did not attend any R2K meetings before the RNC.

[8]A third party (Direct Action Network) reported that R2K would have "[a]t least ten radical lawyers working on jail solidarity issues." MD, at 9. Aside from the fact that this is at best a third hand report, there is nothing inappropriate for R2K to secure lawyers ("radical" or not) to work on the legal issues posed by clients who engaged in jail solidarity. Criminal defense lawyers regularly work on a range of issues presented by the unusual or even misguided actions of their clients. The City apparently believes that this turns the lawyers into criminal conspirators. Fortunately, the law does not.

or from persons who talked with the lawyers) shows only that the lawyers intended to support their clients' "*goals.*" MD, at 10 (emphasis added). Thus, Eric Laursen, a political protester, testified that it was "too much of a generalization" to say that "attorneys who were affiliated with R2K Legal were supportive of jail solidarity." Exhibit 8, at 226. Further, in his opinion, the lawyers "would help them to achieve whatever goal they were trying to achieve with jail solidarity, get out as a group, et cetera." Id. at 227 (emphasis added). Even taking Mr. Laursen's opinions at face value, support of the goal of release does not amount to conspiring with clients or advocating the tactics used.

In a further futile attempt to convince this Court that plaintiff's counsel "planned for and, perhaps helped inmates" engage in jail solidarity, MD, at 9, defendants point to their visiting "the arrestees inside the Philadelphia jails and speak[ing] with them." MD, at 10. Lawyer visits to arrestees are not commonly viewed as a criminal enterprise. Moreover, the visit took place at the invitation of Bradford Richman and John Gallagher (who were concerned about allegations of abuse of arrestees, MD, Exhibits 16, at 95-96; 23). At the June 1 hearing, defendants had alleged that the visit was intended to persuade arrestees to cooperate. Exhibit 4, at 40. That false claim was answered as follows:

> MR. RUDOVSKY: Well, to be frank, the only information I have is that the day on August 2nd, the day after most people were arrested, including our two clients, I did go down to the Police Administration Building to see what was going on down there. I did not have those clients then. I don't know what conditions they were in, I wouldn't even have been able to recognize them. I didn't know them at the time.
>
> . . .
>
> MR. RUDOVSKY: I just want to say for the record, since it was

> said that Mr. Richman invited me there to persuade my clients to expedite the process is absolutely false.
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> . . .
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> I made immediate complaints to get people arraigned within a short period of time because we were having 10 or 12 people to a cell, and there are hundreds of witnesses to that. That's all I saw. Exhibit 4, at 37, 41-42.

The new claim – that counsel was there to advocate jail solidarity – comes with no substantiation.

We have already demonstrated the falsity of the next claim: that "the police allowed these attorneys access to the protesters in an effort to convince them to give their real names in order to expedite their release." MD, at 10. The City's repetition of this claim once again reflects the belief that if you repeat a falsehood often enough, perhaps it will be believed. The City ends its parade of misleading assertions by alleging that "communication with R2K Legal Collective to the prisoners is through the Public Defender and the R2K lawyers with Pennsylvania Bar cards." MD, 10-11. How that proves that *plaintiff's counsel* were "advising the protesters to continue their jail solidarity tactics," MD at 10, is left unexplained.[9]

Defendants' motion is not the first time that the City's lawyers have leveled

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[9]The City's attempt to link plaintiff's counsel to support of jail solidarity is continued in the Defendants' Motion for Summary Judgment where it is alleged that Mr. Rudovsky was "privy to discussion by arrestees about non cooperation." MSJ, at 28. In support, defendants cite to the Sisson Deposition, Exhibit 34 at 232-34, MSJ, but the designated pages contain no reference to such an event.

Our focus on the false and unsubstantiated charges against plaintiff's counsel, as opposed to the four other lawyers mentioned by defendants, is necessitated by the fact that plaintiff's counsel have been charged with criminal conspiracy. However, as this Memorandum makes clear, there is no evidence implicating any lawyer in criminal activity or which would support the request for a deposition concerning relevant and non-privileged information.

unsubstantiated allegations of wrongdoing against plaintiff's counsel. At the deposition of Dr, Charles Sisson, plaintiff Sisson's father, and an economist with the International Monetary Fund in Washington, D.C., the following exchange took place between Dr. Sisson and David Wolfsohn, counsel for the City:

BY MR. WOLFSOHN:

Q Are you aware that the attorneys representing your daughter took part in strategy sessions regarding this refusal to cooperate in training sessions?

A I am not aware.

MR. PRESSER: Objection.

BY MR. WOLFSOHN:

Q Would that be a concern to you, that Mr. Presser and Mr. Messing before the convention met with groups of people to discuss noncooperation and jail?

MR. PRESSER: Objection.

THE WITNESS: I would be surprised.

BY MR. WOLFSOHN:

Q Why would you be surprised?

A I didn't know that. I had no idea, no understanding whatsoever about that.

Q And would you be upset if you thought that Mr. Presser and Mr. Messing had a political agenda that they were personally involved in before the convention that they were trying to advance through this lawsuit that your daughter has brought?

A Your question again?

Q Would you be concerned that attorneys for your daughter, Mr. Messing and Mr. Presser, were involved in training for what's called jail solidarity, that is, refusal to cooperate in jail, and that they are trying to advance that agenda through this lawsuit in which they are representing your daughter?

MR. PRESSER: I will object to this whole line of questioning because you have laid no foundation and you have no evidence of any of those facts.

MR. WOLFSOHN: I have a huge amount of evidence, including deposition testimony yesterday of the WILPF representative.

MR. PRESSER: I renew my objection.

THE WITNESS: What can I say?

BY MR. WOLFSOHN:

Q That would be of concern to you, wouldn't it?

A I would be concerned.

Q Because as far as you know, your daughter had no political objective when she was up in Philadelphia and has no political objectives in this lawsuit, correct?

A That would be my understanding.

Plaintiff's Exhibit B, at 70-72.

It is remarkable that the WILPF deposition is nowhere cited by the defendants. Moreover, the "huge amount of evidence" turns out to be nothing but baseless McCarthy-type allegations.

. . .

The City's attempt to place plaintiff's counsel at the "heart" of a criminal conspiracy, while plainly spurious, does demonstrate a certain consistency: the allegations of criminal conspiracy against counsel, like the criminal charges made against the plaintiff by the defendants on August 1, 2000 are made without cause or supporting evidence. In an attempt to deflect attention from the merits of the case by attacking plaintiff's counsel, the City embraces a tactic that has sordid historical roots. For example, in the 1950's high government officials contended that lawyers who represented persons with communist affiliations were as dangerous as their

clients.[10] The FBI and the Department of Justice engaged in an extensive campaign to discredit the lawyers and legal organizations that were involved in these cases.[11]

The notion that lawyers are to be blamed for unrest was also raised during the trial of the "Chicago Seven," the prosecution that arose out of the demonstrations at the Democratic National Convention in Chicago in 1968, when Judge Hoffman stated that the demonstrations and unrest in the country could be explained by the ready availability of lawyers for the demonstrators.[12] Now the same kind of charges are made by lawyers for the City of Philadelphia.

B. Defendants Have Failed to Justify the Request for Depositions

Defendants assert that the Court can order a lawyer for a party to be deposed under the test set forth in Frazier v. SEPTA, 161 F.R.D. 309 (E.D. Pa. 1995). Without engaging in needless debate about the proper standards for ordering such a deposition, the facts in this case simply do not support this request. Defendants' argument rests on a foundation of false and misleading assertions. Moreover, the information sought from the attorneys would be irrelevant to the issues

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[10]See R. BROWN, LOYALTY AND SECURITY: EMPLOYMENT TESTS IN THE UNITED STATES, 333-56 (1958); see also, F. DONNER, THE AGE OF SURVEILLANCE: THE AIMS AND METHODS OF AMERICA'S POLITICAL INTELLIGENCE SYSTEM, 145 (1980)(stating that internal FBI files characterized the American Civil Liberties Union as "nothing but a front for the Communists").

[11]See F. DONNER, supra at 146-49. See also Matson v. Margiotti, 371 Pa. 188, 88 A.2d 892 (1952)(libel action against Attorney General for allegations of communist sympathies on part of a lawyer).

[12]See J. EPSTEIN, THE GREAT CONSPIRACY TRIAL 389-96 (1970); J. SCHULTZ, THE MOTION WILL BE DENIED: A NEW REPORT ON THE CHICAGO CONSPIRACY TRIAL 160, 161 91972); Lukas, The Judge Himself Becomes an Issue in the Chicago Trial, N.Y. Times, Oct. 5, 1969, §IV, at 9, col. 3.

in this case. The central issue is whether the arrest was made without probable cause. As the case law makes clear, that issue must be decided solely on the information reasonably known to the police at the time of the arrest; nothing disclosed by reason of the arrest or by later investigation is relevant to this question. Parkhurst v. Trapp, 77 F.3d 707, 711, n.4 (3d Cir. 1996). As defendant Johnson had no knowledge of these allegations at the time he ordered the arrest, it would be irrelevant at summary judgment or at trial.

With respect to the length of plaintiff's confinement, counsel have nothing of a non-privileged nature to add to what is already a voluminous record on the causes of the four day detention. The lines are clearly drawn: plaintiff maintains that he identified himself, was not engaged in jail solidarity, and should have been arraigned expeditiously. Defendants claim that the acts of the arrestees so disrupted the system that the arraignment of the plaintiff was delayed at no fault of the City. Defendants have listed 86 witnesses for trial and no doubt many will testify on this issue. Defendants' Final Pre-Trial Memorandum, at Exhibit B. Counsel has no further information on this issue.

Moreover, as a procedural matter, the defendants' request for additional depositions comes far too late in the day. From the outset of this litigation, the City has asserted that the plaintiff was part of a large conspiracy to disrupt the RNC and to engage in obstructionist tactics in the post-arrest processing. Well before the deadline for discovery, defendants alleged that lawyers had information relevant to the defense of this case. See, MD, Exhibit 4 at 36. Indeed, many of the documents upon which defendants now rely for their belated request for additional discovery were available before the end of discovery. Thus, as to the lawyers who are not counsel of record (Krasner, Erba, Epstein and Hetznecker), there is absolutely no justification

for the post-discovery deadline request for depositions.[13] They could have been deposed at any time in this litigation and they are not listed and will not be called as witnesses for the plaintiff.

With respect to counsel of record, at the pre-trial hearing on June 1, 2001, this Court stated that it would consider depositions, but only for the "limited purposes of what [counsel] know . . . relating to Graves, Ciccantelli, and Sisson." Defendants' Exhibit 4, at 43. See also, Id. at 41 (depositions will be permitted if it is "the only possible way [defendants] can show [circumstances at PDU]"). Counsel for defendants later stated that they would forego the depositions on counsel's agreement not to testify with respect to unspecified evidence that the City would seek to introduce regarding certain alleged actions and statements on our part. MD, Exhibit 29. Defendants would have the Court believe that this was the end of the matter as they attach no further documents on this issue. But counsel responded by reiterating that they did not intend to testify at trial and by requesting the relevant information: the "statements made and actions taken" by counsel that the defendants would seek to introduce. Plaintiff's Exhibit C. In response, defendants failed to provide the relevant information and simply listed the same meaningless generic topics for deposition that had been referenced earlier. Plaintiff's Exhibit D. At that point, we could not proceed on defendants' "offer" and defendants chose not to pursue the matter until the discovery deadline had passed.

Accordingly, defendants have failed to justify their request for further discovery. As this

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[13]It should be noted that there has been no impediment in this case to the taking of depositions of lawyers not of record in this case. The defendants deposed attorney Bradley Bridge concerning his knowledge of the events at the Warehouse. See MD Exhibit 15. And in other litigation concerning the RNC, Schiavone v. City of Philadelphia, C.A. No. 00- 4117 (E.D.Pa.), the defendants have taken the deposition of Larry Krasner, Esq., one of the lawyers they now seek to depose in this case.

Court has stated, consistent with Peerless Heater Co. v. Mestek, Inc., 2000 WL 1511281 (E.D. Pa. Feb. 7, 2000), depositions for the kind of information defendants seek from counsel of record can only be permitted if the party has no other way of obtaining the information. Exhibit 4, at 41. Here, there is abundant evidence concerning what occurred with respect to pre-arraignment delays.

III. Sanctions

Plaintiff requests sanctions in the form of attorney's fees against the defendants under Rule 37, F.R.Civ. P. The Motion for Discovery is based on false representations, non-existent exhibits, and unsubstantiated charges of criminal conduct on the part of plaintiff's counsel. See Barnes Foundation v. Township of Lower Merion, 242 F.3d 151, 162-165 (3d Cir. 2001)(ordering award of fees under §1988 for groundless accusations of racial bias). This Court has broad discretion to order the payment of fees for the reasonable time spent in opposing this Motion. See, e.g., Pearce v. Club Med. Sales, Inc., 172 F.R.D. 407 (N.D. Cal. 1997).

IV. Conclusion

The Defendants have abused the discovery process by their unsubstantiated allegations. The Motion should be dismissed and their unsubstantiated charges should be sanctioned.

Respectfully submitted,

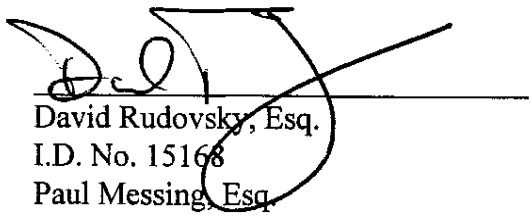

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EXHIBIT A

TABLE OF MISREPRESENTATIONS

DEFENDANTS' REPRESENTATION	LACK OF SUPPORT/MISREPRESENTATION
Page 8: "Plaintiff's lawyers ostensibly help[ed] the City prepare to respond to the protests." MD, at 8. Plaintiff's lawyers gained access to jails by promising to act as "intermediaries" between City and arrestees to "convince them to give their names and otherwise cooperate with the authorities." MSJ, at 12. See also MD, 9.	Defendants point to four sets of exhibits, but none of them support the claim: Exhibit 17: Inspector Kahlbach testifies that Mr. Messing (along with Mr. Wolfsohn) toured Holmesburg Prison before the RNC to check conditions for short term holding of arrestees. Exhibit 16: Special Advisor to Commissioner Timoney, John Gallagher, testifies about working with Messrs. Rudovsky, Messing and Presser in 1998 on an entirely unrelated case, concerning a consent decree regarding police disciplinary procedures. Exhibit 13: An August 7, 2000 Press Release in which a third party, R2K Legal, states that counsel had been "in regular dialogue with the City" prior to the RNC. [As set forth in Memorandum of Law, this "dialogue" had nothing to do with acting as "intermediaries;" indeed, to the contrary, counsel had sued the City and had only discussed matters concerning how the City would process persons arrested.] Exhibits 18-19: Letters from Jules Epstein to Honorable Louis Presenza and Bradford Richman regarding the role of volunteer lawyers for representation of persons arrested on summary offenses.

Page 6: "Plaintiff's lawyers prepared activists to get arrested." Page 7: Counsel were "deeply involved in some or more of these planning (sic) for these events."	To support the charge that plaintiff's lawyers prepared and planned for the protesters' arrests, defendants point to several exhibits. Not a single exhibit supports the claims. Exhibit 12: This website posting from R2K Legal almost two full months after the arrests and at a point where counsel represented criminal defendants from the RNC, states the Messrs. Erba, Rudovsky and Epstein, "have been working with the collective," but there is no suggestion or intimation they they had prepared activists to get arrested or were involved in planning for protests or disruptive actions in jails. Exhibit 13: August 7, 2000 press release listing counsel as part of a "legal defense committee." As noted, by this time almost 400 people had been arrested and counsel were representing some individuals and consulting with other lawyers and lay people to organize the defense efforts. Exhibit 14: Deposition testimony from Jody Dodd that attorneys Hetznecker, Krasner and Rudovsky were lawyer volunteers. No testimony that plaintiff's counsel "prepared activists to get arrested" or were "deeply involved" in planning.

Page 8: In support of claim that Rudovsky and Messing were involved in advocating jail solidarity and other disruptive tactics, defendants assert that Exhibit 14 states "a handbook on jail solidarity tactics was drafted or negotiated at meetings of members of the legal team attended by Mr. Erba and others."	Exhibit 14 is the deposition of Jody Dodd. But Ms. Dodd testified that the document had been drafted by an unknown person from the Direct Action Group (not the legal team). The only lawyer she could recall being at the meeting where it was discussed was Roy Zipris who (the defendants fail to inform the Court) opposed the use of jail solidarity tactics. Ms. Dodd had no specific recall of Mr. Erba or any other lawyers being at that meeting. Defendants also point to Exhibit 15 (deposition of Bradley Bridge) to support the claim that attorneys Krasner, Erba and Hetznecker attended meetings of R2K legal in which participants were "trained . . . in the legal aspects of direct action and jail solidarity." But Mr. Bridge says that he was there only to advise people of their legal rights and makes no reference to any training regarding direct action or jail solidarity. Further, neither Mr. Messing nor Mr. Rudovsky were at this meeting.

Page 9: "Plaintiff's lawyers planned for jail solidarity and, perhaps, helped inmates to engage in it." Page 10: "Some or all of the attorneys gave active support to the protesters' use of jail solidarity."	The documents cited in support of this claim show only that R2K Legal had made plans to secure representation and support for those arrestees who were engaging in jail solidarity by not providing their names. This fact was well known before and during the RNC. To support the claim that *plaintiff's lawyers "planned for jail solidarity" and that the lawyers "gave active support to the protesters' use of jail solidarity"* defendants point to exhibits that do not mention Mr. Rudovsky or Mr. Messing in any connection to jail solidarity or other tactics. Further, these documents show only that other lawyers intended to support their clients "*goals*" of release from custody and dismissal of charges. See Plaintiff's Memorandum of Law, at 10.

Page 10: Plaintiff's counsel was engaged in support of jail solidarity by visiting "the arrestees inside the Philadelphia jails and speak[ing] with them." Page 28 of Defendants' Memorandum in Support of Motion for Summary Judgment: "Mr. Rudovsky was privy to discussions by arrestees about non-cooperation."	In support of claim that plaintiff's counsel visited the arrestees to advocate jail solidarity, Exhibits 16 and 23 make clear the visit was at the invitation of Messrs. Richman and Gallagher and neither document shows that counsel advocated jail solidarity or other disruptive tactics. See Exhibit 4, at 37, 41-42 (hearing before this Court on June 1, 2001) In support of claim that Mr. Rudovsky was "privy to discussions by arrestees about non-cooperation," defendants cite to pages 232-234 of the Sisson deposition, Exhibit 34 MSJ but they provide only page 233, and a reading of all three pages reveals absolutely no mention of Mr. Rudovsky or any attorney being privy to such a discussion.

Pages 1-3, 5, 6-9. Repeated assertions that plaintiff's lawyers were "deeply enmeshed" in the events in this case and were at the "heart" of the "plan to engage in illegal activity" by helping to train and prepare large numbers of people to engage in civil disobedience, get themselves arrested, and continue disrupting the system from inside the City's jails." Id at 3.	As demonstrated above, there is no evidence in any of the exhibits (other than representation of clients) that supports the claim that Mr. Rudovsky and Mr. Messing were at the "heart"of a broad criminal conspiracy.

EXHIBIT B

79680.0
BMS

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - - - - - - - - - - - -x

TAMARA SISSON, :

Plaintiff, : Civil Action Number

vs. : 01-CV-460

CITY OF PHILADELPHIA, :

et al, :

Defendants. :

- - - - - - - - - - - - - - -x

DEPOSITION OF CHARLES A. SISSON

Washington, DC

Wednesday, November 21, 2001

REPORTED BY:

BRENDA SMONSKEY

A I think we mentioned it. But I was aware of it from the beginning. It was widely reported in the press.

Q Are you aware that the attorneys representing your daughter took part in strategy sessions regarding this refusal to cooperate in training sessions?

A I am not aware.

MR. PRESSER: Objection.

BY MR. WOLFSOHN:

Q Would that be a concern to you, that Mr. Presser and Mr. Messing before the convention met with groups of people to discuss noncooperation and jail?

MR. PRESSER: Objection.

THE WITNESS: I would be surprised.

BY MR. WOLFSOHN:

Q Why would you be surprised?

A I didn't know that. I had no idea, no understanding whatsoever about that.

Q And would you be upset if you thought that Mr. Presser and Mr. Messing had a political agenda

that they were personally involved in before the convention that they were trying to advance through this lawsuit that your daughter has brought?

A Your question was again?

Q Would you be concerned that attorneys for your daughter, Mr. Messing and Mr. Presser, were involved in training for what's called jail solidarity, that is, refusal to cooperate in jail, and that they are trying to advance that agenda through this lawsuit in which they are representing your daughter?

MR. PRESSER: I will object to this whole line of questioning because you have laid no foundation and you have no evidence of any of those facts.

MR. WOLFSOHN: I have a huge amount of evidence, including deposition testimony yesterday of the WILPF representative.

MR. PRESSER: I will renew my objection.

THE WITNESS: What can I say?

BY MR. WOLFSOHN:

Q That would be of concern to you, wouldn't

it?

A I would be surprised.

Q Because as far as you know, your daughter had no political objectives when she was up in Philadelphia and has no political objectives in this lawsuit; correct?

A That would be my understanding.

MR. WOLFSOHN: Let's take a break.

(Recess.)

BY MR. WOLFSOHN:

Q In terms of this jail solidarity issue, did your daughter ever tell you who she shared her cell with?

A No. She certainly didn't say names. She just said they were people that were from the -- that had been arrested as part of the group in the factory.

Q Did she tell you whether the people in her cell were refusing to give their names?

A I think so. I think she did say at least some of them were refusing to give their names, yes.

Q Did she indicate whether the people in her

EXHIBIT C

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David Rudovsky
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October 25, 2001

David Wolfsohn, Esquire
Hangley, Aronchick, Segal & Pudlin
One Logan Square
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Philadelphia, PA 19103-6933

RE: Michael Graves v. City of Philadelphia, et al., No. 01-CV-308; and
Tamara Sisson v. City of Philadelphia, et al., No. 01-CV-460

Dear Mr. Wolfson:

We received your letter dated and faxed October 24, 2001, regarding the possibility that David Rudovsky, Jules Epstein, Stefan Presser or I will testify at the trial or trials in the above matters.

At the outset, let me make clear that at this point we do not intend to testify for several discrete reasons, one of which is that we fail to see the relevance of our testimony. Kindly provide a detailed statement as to the "statements made and actions taken" by each of us which you intend to introduce at trial. Please include the source of each such statement or action taken and the person or persons whom you intend to call at trial to testify as to such statements or actions taken. We can then make an informed decision as to whether to agree to the proposal set forth in your letter.

Thank you for your consideration.

Sincerely,

PAUL MESSING
Attorney at Law

EXHIBIT D

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October 30, 2001

VIA FACSIMILE

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Re: **Michael Graves v. City of Philadelphia et al.**
Civil Action No. 01-308

Tamara Sisson v. City of Philadelphia et al.
Civil Action No. 01-460

Gentlemen and Ms. Kohart:

This letter responds to your letters seeking the bases for the need to depose Messrs. Rudovsky, Messing, Epstein and Presser. Based upon discovery obtained in these and other matters, it is clear that all of you were involved in one or more of the following:

(1) planning prior to the Republican National Convention ("RNC") concerning prisoner processing. One or more of you agreed with the plan developed by the Philadelphia Police Department, the District Attorney's Office

and the First Judicial District concerning the processing of those arrested during the RNC;

(2) contact with groups planning to conduct "direct actions" on August 1, 2000, with the intent of being arrested by the Philadelphia Police Department;

(3) personal knowledge of the conditions at the Prisoner Detention Unit ("PDU") and the treatment of prisoners housed there during the RNC;

(4) personal knowledge of the implementation by the majority of the prisoners at the PDU of so-called "jail solidarity" tactics while incarcerated, including not giving true names to prisoner processors, and generally refusing to cooperate during processing and arraignment.

We are willing to forego deposing Messrs. Rudovsky, Messing and Epstein if they will confirm that under no circumstances will they testify during the trial of these matters.

Mary, as for Mr. Presser, because he was so centrally involved in the matters listed above, we would like your agreement that you will produce him for his deposition.

Sincerely,

Henry E. Hockeimer, Jr.

HEH/tg

CERTIFICATE OF SERVICE

I, Paul Messing, Esquire, certify that I have caused to be delivered a copy of Plaintiff's Response to Defendants' Motion for Leave to Depose Jules Epstein, et al., et al. to:

David Wolfsohn, Esquire
Hangley, Aronchick, Segal & Pudlin
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by ~~first class mail.~~ hand delivery

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Date: 12-31-01