

The J.O.C.C. running resume is the primary information stream, in real-time, of information and decisions and actions as described to and by command center officials as the mass arrest decisions were made and effected. During the activities and mass arrests of September 27, 2002, it was viewable on each of the approximately fifty (50) computer stations in the command center and would also typically be displayed on one or two of the multiple fifty-inch (50") displays at the head of the command center. The underlying data was redundantly stored on computer servers and media, from which hard copies or "J.O.C.C. printouts" could be made. Command center personnel used their workstations to enter information into the running resume, where it would be categorized and viewable by all others, and would flow to the Command Desk which, in turn, would enter and stream decisions and information into the system to be viewed by the scores of people staffing the command center. According to J.O.C.C. Commander Alfred Broadbent, the running resume contained so much constantly flowing information that he needed several assistants to "review it, summarize it, and then debrief me, and then I would make the decisions of what we were going to do based on the information they gave me." Broadbent Dep. at 41:15 – 19 (Ex. 6 to Barham Pls' Motion for Sanctions) (Doc. No. 439-9).

It is key to all claims, significant events and decisions.

Today, after years of litigation and recalcitrance in discovery by the District of Columbia, plaintiffs have established that the September 2002 J.O.C.C. running resume is destroyed and/or lost. As reflected in the Nickles declaration, its loss is no longer in dispute. Nickles Decl. at 9-10, ¶19 (Doc. No. 501-2) (referencing need "to prevent a reoccurrence of such a loss of evidence"); See also Declaration of Thomas L. Koger Pursuant to Order Dated October 30, 2007 (Koger Decl., 11/16/07) at 3-4, ¶¶8-9 (Doc. No. 373-2) (conceding September 2002 J.O.C.C. running

resume was never located); Harris Decl., 8/12/09 at 4, ¶¶7-8 (Doc. No. 501-4) (same); Harris Decl., 11/16/07 at 2, ¶5 (Doc. No. 373-2).

One might wonder how it is that the former Chair of the Judiciary Committee, charged with exercising legislative oversight functions and having done so in the course of a formal investigation into police misconduct during mass demonstrations, could hold an expectation that the Council had received the all-critical command center running resume.

The answer is simple. The Council was misled by the District's top attorneys and the Chief of Police.

MPD General Counsel Terrence D. Ryan, in a letter signed by MPD Deputy General Counsel Ronald B. Harris on his behalf, in response to the Council's *subpoena duces tecum* seeking production of the command center running resume represented that "[e]nclosed are the SOCC/JOCC running resumes for the two listed events [the April 2000 and September 2002 IMF/WB protests]." November 21, 2003 letter to Committee Chair Patterson (attached as exhibit to Ms. Patterson's letter to the Court at Bates #MPD 04271) (Doc. No. 513).

MPD counsel explained that "The department has substituted the SOCC/JOCC running resumes for the Commander's Mass Demonstration Event Logs. The running resumes for the above listed events are being produced today." Id.

Later in the same transmittal letter, counsel represented that "[t]he documents that we are producing today are: . . . Running resumes for April 2000 and September 2002 IMF/WB protests." Id. at Bates #MPD 04273.

Chief of Police Charles H. Ramsey tendered to Committee Chair Patterson on that same day his responses to the Council's written deposition questions, submitted under penalty of perjury. Ramsey attested, with respect to three identified mass protests including the relevant

September 2002 protest, that the MPD had not created a P.D. 759B “Commander’s Mass Demonstration Event Log” as required pursuant to the mass demonstration manual for each of the listed events, but rather that “Commander’s Mass Demonstration Event logs have taken the form of the running resumes produced by the department’s Joint Operations Command Center. The running resumes that have not been produced previously will be submitted on this date.” Ex. 1, Written Deposition of Charles H. Ramsey at Bates #MPD 05815. A copy of Ramsey’s deposition responses is attached as Exhibit 1 along with the transmittal letter to the Committee Chair Kathy Patterson, from Terrence D. Ryan, signed by Ronald B. Harris on his behalf.

The involved District officials now acknowledge that they did not tender the command center Running Resume for the September 2002 IMF/WB protests. Nickles Decl. at 9-10, ¶19 (Doc. No. 501-2); Koger Decl., 11/16/07 at 3-4, ¶¶8-9 (Doc. No. 373-2); Harris Decl., 8/12/09 at 4, ¶¶7-8 (Doc. No. 501-4); Harris Decl., 11/16/07 at 2, ¶5 (Doc. No. 373-2, p. 30); DC’s Response to Barham Pls’ Motion to Compel at 1 (Doc. No. 344) (“the District has again diligently sought the JOCC Running Resume and is unable to locate that material in either hard copy or electronic data format”).

What did the executive branch, subject to subpoena, produce to the Council as it conducted its formal investigation of police misconduct? It was merely the Special Services Command running resume aka the “Intelligence Section” running resume. Harris Decl., 11/16/07, at 2, ¶5 (Doc. No. 373-2, p. 30).

The J.O.C.C. running resume, in contrast, is a near-comprehensive command center-based compilation of significant observations, decisions, and events, processed through specialized software designed to manage this massive information flow from scores of sources and points of entry. See, gen’ly, Barham Pls’ Motion for Sanctions at 6 – 12 (Doc. No. 439); See,

also, DC's Response to Barham Pls' Motion to Compel at 2 (Doc. No. 344) (conceding that the J.O.C.C. Running Resumes in connection with the April 2000 IMF/WB mass demonstrations "reflect a substantial amount of information related to those events").

Committee Chair Patterson, who was engaged in a fundamental exercise of checks and balances through the Judiciary Committee's oversight of the MPD, was understandably misled to believe that the MPD had produced to the Council the September 2002 J.O.C.C. running resume. After all, that was demanded pursuant to the Council's subpoena. The General Counsel, the Deputy General Counsel, and the Chief of Police all represented as described above. Not one of those persons ever intimated or suggested, much less represented, that the September 2002 J.O.C.C. running resume had been lost, destroyed or had gone missing.

Committee Chair Patterson was entitled to accept these top officials' representations. To mislead the Council in the exercise of its oversight authority in the course of a formal investigation into police misconduct would be an extraordinary violation, constitute an obstruction of justice potentially criminal in nature, and would be an unconscionable abuse of public authority.

During its investigation, the Council was *never* told that the document misrepresented to be the "SOCC/JOCC running resume," in fact was not that. It was *never* told that the September 2002 J.O.C.C. running resume had gone missing.

The Council's first awareness that it had not been provided the running resume appears to have arisen in November, 2007, when requests were made by civil litigants and the Office of the Attorney General to conduct a search. The OAG gave the Council an example of how the command center running resume would be formatted, to aid in the review. See, Koger Decl.,

11/16/07 at 16-17, ¶49 (Doc. No. 373-2). This occurred *after* Ms. Patterson had left office in December, 2006.

The Council, of course, cooperated with the request and responded that it did not possess such material. See, Id.

Having been forced through persistent civil litigation to admit that the District *never* turned over the September 2002 J.O.C.C. running resume, despite misrepresenting that it had, the District's top lawyers including Peter Nickles are now presenting a very different story than was represented in 2003.

Now, they claim that by the time they responded to the subpoena in September, 2003, they had determined that the J.O.C.C. running resume had gone missing. See Koger Decl., 11/16/07 at 4, ¶9 (Doc. No. 373-2) (Koger himself recognized the importance of the J.O.C.C. running resume based on prior litigation, of his own initiative specifically requested the September 2002 J.O.C.C. running resume, and learned “in or about September 2003” that it could not be located); Harris Decl., 11/16/07 at 2, ¶5 (Doc. No. 373-2, p. 30); Harris Decl., 8/12/09 at 4, ¶¶6-7(Doc. No. 501-4) (claims in response to the Council’s July 2003 and September 2003 subpoenas, he undertook “exhaustive” search efforts and failed to locate the September 2002 J.O.C.C. running resume); Nickles Decl. at 9-10, ¶19 (Doc. No. 501-2) (“I have been informed that MPD Deputy General Counsel Ronald Harris began trying to obtain the document after receiving a subpoena issued in September 2003, from the District of Columbia Council on the Judiciary specifically seeking the Running Resume for the September 2002 International Monetary Fund/World Bank protests.”).

This raises the critical question: Why did they not simply tell that to the Council when the J.O.C.C. running resume was specifically demanded under legal process? Why did the top

lawyers for the District and the Chief of Police misrepresent another document to be the J.O.C.C. running resume and fail to advise the Council of a belief that it had disappeared?

The answer is this: If the executive branch had represented to the Council the dubious claim that this critical database had inexplicably “disappeared” less than 12 months after its creation and despite being stored redundantly on multiple media and backups and on no less than one dozen hard copy print-outs for distribution through top command, likely to Chief Ramsey himself, and likely also to the Office of the General Counsel, there would have been a firestorm response. Search efforts independent of the MPD or executive branch attorneys would have been conducted and the Council, of course, would have located the J.O.C.C. running resume.

The Council was prepared to seek judicial enforcement of their subpoena if necessary. The Judiciary Committee ultimately reported that its investigation had “been hindered throughout” by the refusal and failure of the executive branch to produce documents in response to Council subpoena. “Having no other option, the Council on February 17, 2004, approved a resolution authorizing the [Council’s] general counsel to go to D.C. Superior Court to seek enforcement of the document subpoena. . . The Council approved the measure unanimously.” March 24, 2004 D.C. Council Report on Investigation of the Metropolitan Police Department’s Policy and Practice in Handling Demonstrations in the District of Columbia at 6-7 (Ex. 1 to Barham Pls’ Reply in Support of Motion to Compel Running Resumes) (Doc. No. 349-2).

Any claim of destruction or loss in September, 2003 would have been debunked by a proper search and/or by deposition of officials in executive or open session. At that time, had the database been erased, it would be recoverable from archive, backup or by a forensic examination of the relevant hard drives on the servers.

Had the MPD and executive branch attorneys merely failed to advise that the running resume had disappeared, thereby avoiding further or independent search, that would constitute a most serious violation of obligation and candor. Standing alone, that would be a shocking and outrageous deception through omission.

As discussed, above, the MPD and the District's top attorneys went further than that. They submitted written correspondence and, indeed a sworn statement from Chief Ramsey, that misled the reader to believe that a different document was the J.O.C.C. running resume and that it had been, in fact, found and produced.

Even worse, evidence shows that the J.O.C.C. running resume *was* then in existence at the time of the July 2003 and September 2003 subpoenas. Furthermore, that District officials were aware of that.

Sgt. Douglas Jones - - who had direct and supervisory operational responsibility for the running resume system - - testified that in 2003 he received an "official" and "legal" request for the running resume from the Office of General Counsel specifically in connection with the Pershing Park arrest litigation. See Dep. of Jones at 21 – 31 (Ex. 1 to Barham Pls' Motion for Sanctions) (Doc. No. 439-4).

Deputy General Counsel Ronald Harris admits that he would have made such a request to Sgt. Jones in response to the Council's subpoenas, but claims he received back "negative results." Harris Decl., 11/16/07 at 2-3, ¶6 (Doc. No. 373-2, pp. 30-31).

Jones has attested, under oath, that in response to such request he "easily" accessed the database. He testified that he satisfied the OGC request by returning a hard copy of the database along with documentation as to the computer path locations where the underlying files were

stored. Jones' testimony places this in 2003. See Dep. of Jones at 21 – 31 (Ex. 1 to Barham Pls' Motion for Sanctions) (Doc. No. 439-4).

This evidence supports the allegation that not only was the running resume possessed by the MPD, it was possessed by its counsel for the purposes of litigation.

Whether considered a whistleblower or simply an honest officer, Jones has a proven track record. In Bolger v. District of Columbia, 03cv0906 (JDB), the executive branch also falsely claimed in connection with April 2002 protests that no J.O.C.C. running could have ever existed because none was created. Jones knew he had produced the April 2002 J.O.C.C. running resume in response to two separate legal requests from the Office of General Counsel, including by sending to Deputy General Counsel Ronald Harris the underlying file. Jones conducted a search of e-mail archives, proved this to be true, and himself recovered an electronic copy of the April 2002 running resume. Thereupon, Deputy General Counsel Harris admitted that the April 2002 J.O.C.C. running resume had been in his possession and in his computer files all along.

The District was sanctioned more than \$90,000 in Bolger for what the Court found to be “a clear case of sanctionable discovery misconduct.” Bolger v. District of Columbia, 248 F.R.D. 339, 345 (D.D.C. 2008); Id., August 20, 2008 Memorandum Opinion, 03cv0906 (JDB) (Bolger Doc. No. 175).

Judge Bates observed, “if [plaintiffs] had not persisted in their repeated efforts to obtain the running resume, *the District may never have disclosed this important document.*” Bolger, 248 F.R.D. at 342 (emphasis added).

These sanctions issued during Mr. Nickles' tenure as Acting Attorney General. He was on notice. He took no action, initiated no investigation, even after Harris was caught red-handed in possession of the J.O.C.C. running resume in the Bolger case.

When the disappearance of the J.O.C.C. running resume was identified in filings in the Barham case, involving the very same operational data and the very same attorneys including Ronald Harris, Attorney General Nickles took no action.

Far from righting its wrongs, the District of Columbia OAG has compounded them by presenting blatantly contradictory claims in the Bolger and the Barham cases trying to explain away the non-production of the running resume by claiming that no J.O.C.C. running resume had ever been created in each case.

The representations of the Office of the Attorney General in each of these cases were completely contradictory and inconsistent with the representations of the OAG in the other. In Bolger, the OAG represented that the April 2002 running resume could not be produced because “no command center logs (or running resumes) were created until *after September, 2002.*” July 31, 2006 Letter from OAG attorney Carl Schifferle to Carl Messineo (emphasis added) (Ex. 14 to Barham Pls’ Motion for Sanctions) (Doc. No. 439-17). Yet, in the Barham class action, the OAG reported that there could not possibly have ever been a September 2002 J.O.C.C. running resume based on the contradictory and equally false claim that the MPD had *stopped producing them by September 2002.* See July 18, 2007 e-mail from Thomas Koger to Carl Messineo (Ex. 17 to Barham Pls’ Motion for Sanctions) (Doc. No. 439-20) (“running resumes were no longer generated by the MPD as of Sept. 2002.”).

One is left with the impression that the OAG has been willing to advance whatever representation serves their immediate interest in litigation defense, without regard to accuracy, consistency or whether based upon the full or true collective knowledge of the MPD. After a series of cases, years of litigation, and an investigation by the D.C. Council, the District has become entangled by the string of false tales it has spun.

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Respectfully submitted,

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