

**IN THE UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO**

Civil Action No. 02-Z-0473 (BNB)

DENVER JUSTICE AND PEACE COMMITTEE, INC. and
LUIS ESPINOSA-ORGANISTA,

Plaintiffs,

v.

CITY OF GOLDEN;
DAVID FARLEY, a detective with the Golden Police Department, in his individual capacity;
JEFF D. KREUTZER, a detective with the Golden Police Department,
in his individual capacity;
DAVID J. THOMAS, District Attorney for the First Judicial District, in his official capacity;
MARK PAUTLER, an Assistant District Attorney for the First Judicial District, in his individual
capacity;
CITY AND COUNTY OF DENVER;
and
ANTHONY ORTIZ, an officer with the Denver Police Department, in his individual capacity,
Defendants.

FOURTH AMENDED COMPLAINT

INTRODUCTION

1. The Denver Justice and Peace Committee (“DJPC”) is an interfaith, grass-roots organization, with over 800 members, that works for lasting peace and economic justice in Latin America. For over twenty years, DJPC has promoted its views through wholly lawful and peaceful activities, such as public education, solidarity projects, legislative advocacy, and nonviolent action campaigns.

2. On December 14, 2000, defendant police officers took over the DJPC office and conducted an illegal search and seizure. They confiscated membership lists, mailing lists, phone tree lists, leaflets, pamphlets, posters, newsletters, articles, and other advocacy materials, none of which is evidence of any crime. On the contrary, these illegally confiscated materials are an integral component of DJPC's lawful advocacy of its political views and its political associations, and are fully protected by the First Amendment to the Constitution. For three and one-half hours during the search, the police rummaged through closets, desk drawers, cupboards, file cabinets, and file folders.

3. DJPC files this action seeking the return of the illegally confiscated materials and to vindicate its rights under the First and Fourth Amendments to the Constitution and the Privacy Protection Act of 1980.

4. In addition, plaintiff Luis Espinosa-Organista ("Espinosa"), DJPC's office administrator, seeks nominal damages for the illegal search of his person that a Denver police officer carried out during the occupation of the DJPC office.

PARTIES

A. Plaintiffs

5. DJPC is a Colorado non-profit corporation, which has operated in Denver for over twenty years. Its office and principal place of business are located at 901 West 14th Avenue, Suite 7, Denver, Colorado 80204. DJPC subleases its office space from the American Friends Service Committee ("AFSC"), which has offices at the same address.

6. In its nonviolent advocacy and action campaigns, DJPC has sought to raise public awareness about ways in which it believes that United States foreign policy thwarts the goals of

peace and social justice in Latin American. Over the years, it has criticized the United States government's support for repressive military dictatorships; opposed our government's involvement in the war in El Salvador; condemned its support for the Contras in Nicaragua; and critiqued the U.S. Army's School of the Americas as a training academy for repression and torture. In more recent years, it has identified the policies of the World Bank and the International Monetary Fund as perpetuating poverty and economic dependence in Latin America. It has condemned the spread of sweatshops under a maquila model of development that depends on exploitation of Third World workers.

7. The DJPC conducts its advocacy through its newsletter, The Mustard Seed; through its web site www.djpc.org; through speakers, articles, leaflets, letter writing campaigns; peaceful picketing; legislative advocacy; and coalition work. In addition, DJPC sponsors the CAMINOS program, which supports a series of human rights observers who spend at least six months accompanying and living with a Guatemalan Mayan community to build ties of solidarity and people-to-people relationships between Colorado residents and Mayan villagers. DJPC publicizes the CAMINOS program through a separate CAMINOS newsletter. DJPC also sponsors an annual awards night ceremony for its membership, which features speakers on human rights issues and provides recognition to individuals who are selected for their noteworthy human rights efforts.

8. Espinosa is a citizen of Mexico and a legal permanent resident of the United States. At all times relevant to this Complaint, Espinosa was a student who worked part-time as the office administrator for DJPC, and his wife, Danielle Short, is an employee of AFSC.

B. Defendants

9. Defendant City of Golden is a municipal corporation incorporated in the State of Colorado. It carries out law enforcement activity through the Golden Police Department. All officers and employees of the Golden Police Department are agents of the City of Golden. The City of Golden is responsible for ensuring that its officers carry out their duties without violating the constitutional rights of the persons with whom they come in contact.

10. At all times relevant to this Complaint, defendant David Farley (“Farley”) was a detective with the Golden Police Department. He is sued in his individual capacity.

11. At all times relevant to this Complaint, defendant Jeff D. Kreutzer (“Kreutzer”) was employed as a detective by the Golden Police Department. He is sued in his individual capacity.

12. Defendant David J. Thomas is the District Attorney for the First Judicial District, which includes the City of Golden. Pursuant to Ex Parte Young, 209 U.S. 123 (1908), he is sued in his official capacity for prospective relief, including the return of the materials confiscated during the search of the DJPC office.

13. At all times relevant to this Complaint, Mark Pautler (“Pautler”) was an Assistant District Attorney working under the supervision of David J. Thomas. On information and belief, Mark Pautler reviewed and approved the affidavit seeking court authorization to search the DJPC office and to seize materials protected by the First Amendment. He is sued individually, and only for acts and omissions undertaken in an investigative capacity.

14. The City and County of Denver is a municipal corporation incorporated in the State of Colorado. It carries out law enforcement activity through the Denver Police

Department. All officers and employees of the Denver Police Department are agents of the City and County of Denver. The City and County of Denver is responsible for ensuring that its officers carry out their duties without violating the constitutional rights of the individuals with whom they come in contact.

15. At all times relevant to this Complaint, Anthony Ortiz (“Ortiz”) was an officer with the Denver Police Department. He is sued in his individual capacity.

16. At all times relevant to this Complaint, all Defendants were acting under color of state law, under color of their office, and within the scope of their employment.

JURISDICTION AND VENUE

17. This action arises under the laws of the United States, including 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction of claims under the Privacy Protection Act of 1980 pursuant to 42 U.S.C. § 2000aa-6(h).

18. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All plaintiffs and defendants reside within the District of Colorado, and the actions and threatened actions occurred within the District of Colorado.

FACTUAL ALLEGATIONS

The Rally at Kohl’s

19. During 2000, DJPC participated in a nationwide nonviolent action campaign to provide support and solidarity for workers who were organizing and fighting for improved working conditions at various factories in the Las Mercedes Free Trade Zone in Nicaragua. One

of those factories, a Taiwanese-owned Chentex plant, produces blue jeans that Kohl's Department Stores sell in the United States.

20. The campaign was led by the Campaign for Labor Rights in Washington, D.C., which produced and distributed literature criticizing the low pay, oppressive working conditions, and anti-union policies at the Chentex plant, which the campaign labeled a "sweatshop."

21. The campaign in the United States included peaceful picketing and leafleting at Kohl's Department Stores around the country, with a goal of increasing public awareness of the plight of the workers who produce some of the clothing sold at Kohl's. Participants in the nationwide campaign included religious groups, human rights groups, students, and labor organizations.

22. As part of the campaign, shoppers were asked to communicate to Kohl's management their support of the Chentex workers and their opposition to anti-labor and anti-union policies. During the summer and fall of 2000, at least five dozen Kohl's stores around the country were the scene of peaceful rallies, demonstrations, and distributions of leaflets conducted by supporters of union workers in Nicaragua.

23. In the fall, the national campaign called for a special holiday-season "mobilization" to organize additional nonviolent actions at Kohl's stores. All across the country, supporters of the Nicaraguan unions organized nonviolent solidarity rallies and demonstrations to take place at Kohl's stores between Thanksgiving and December 10. As part of this national effort, DJPC sponsored a rally on December 9, 2000 at the Kohl's store in Golden.

24. During the rally, participants sang carols, displayed signs, and peacefully distributed literature to shoppers and others passing by outside Kohl's. They also asked

shoppers to sign communications addressed to Kohl's management that expressed support for the workers who made blue jeans for Kohl's in the Chentex factory in Nicaragua. A number of shoppers signed these expressions of support.

25. About half an hour after the rally and literature distribution had begun, a group of four as-yet-unidentified individuals arrived on the scene dressed in Santa Claus costumes. They entered the Kohl's store and one or more of them allegedly engaged in vandalism and property destruction by applying spray paint to store merchandise. The individuals in Santa Claus costumes then fled the scene.

26. DJPC did not have advance knowledge of, condone, authorize, approve, or ratify the alleged vandalism.

27. DJPC contemporaneously and subsequently strongly condemned the destruction of Kohl's property by the unknown individuals, and stressed that DJPC opposes any and all acts of lawbreaking or violence.

The Illegal Search Warrant

28. The Golden Police Department took responsibility for investigating the vandalism that took place at the Kohl's store. Farley supervised the investigation. Kreutzer was one of the detectives assigned to the investigation.

29. As part of his investigation into the vandalism at Kohl's, Kreutzer drafted an affidavit seeking a warrant to search DJPC's offices. In the affidavit, Kreutzer asked for authority to search for and to seize a variety of materials that are neither evidence of crime nor the fruits or instrumentalities of crime, such as membership lists, pamphlets, posters, and other advocacy materials that are protected by the First Amendment.

30. Kreutzer consulted with Pautler, an Assistant District Attorney, about the prospect of searching the DJPC office. Pautler approved the contents of Kreutzer's affidavit and otherwise approved Kreutzer's efforts to obtain court authorization to search the office for the protected materials specified in the warrant.

31. On information and belief, Kreutzer also consulted with Farley about the prospect of searching the DJPC office. On information and belief, Farley also reviewed and approved the contents of Kreutzer's affidavit and otherwise approved Kreutzer's efforts to obtain court authorization to search the DJPC office for the protected materials specified in the warrant. As Kreutzer's supervisor, Farley had the power to inform Kreutzer that the affidavit did not contain sufficient facts to justify the seizure of the protected materials, but he did not do so.

32. In addition, in drafting the affidavit for the warrant, Kreutzer intentionally or recklessly included false statements of material fact and/or intentionally or recklessly omitted material facts. These material statements or omissions include, but are not limited to, the following:

a. Several days before the affidavit was submitted to the court, the Golden Police Department collected information from DJPC's web site. Kreutzer was aware of DJPC's mission statement and its long record of peaceful nonviolent advocacy of its political views. Kreutzer knew that the vandalism at Kohl's was inconsistent with DJPC's mission, goals, tactics, and values, but he failed to include that information in the affidavit.

b. Kreutzer knew that DJPC had sponsored an earlier rally at Kohl's in August, 2000, and that this rally had proceeded peacefully and without incident.

Kreutzer failed to include in the affidavit any mention of the earlier rally or DJPC's sponsorship of it.

c. Kreutzer was aware that the Golden police obtained announcements of the rally from the internet, and that these announcements advised individuals to come in costume. Kreutzer failed to include this information in the affidavit.

d. Kreutzer was aware that some of the participants in the rally told police that they learned of the protest from the internet. Kreutzer failed to include this information in the affidavit.

33. On December 14, 2000, the Jefferson County Court issued the requested search warrant. Kreutzer's affidavit was ordered sealed.

34. The search warrant authorized law enforcement officers to seize specified property at the DJPC's offices, including, but not limited to, the following materials:

- "Pamphlets, papers, and flyers that are protest related";
- "Posters that are protest related";
- "Videotape and still photographs of persons protesting any organization or business"; and
- "Membership lists for Denver Peace & Justice Committee."

35. No reasonable police officer could have considered the foregoing materials to be evidence of crime.

The Search of the DJPC Office

36. At approximately 11:45 a.m. on December 14, 2000, Kreutzer arrived at the office of DJPC to execute the search warrant. He was accompanied by additional officers of

the Golden Police Department, as well as officers of the Denver Police Department who were working for the City and County of Denver. The Denver officers assisted Kreutzer and the Golden officers in executing the search warrant. In all respects, they acted in concert with Kreutzer.

37. They took control of the office and stayed for three and one-half hours.

38. The officers initially took control of the offices of both AFSC and DJPC. When the officers arrived, there were approximately three staff members of AFSC and one staff member of DJPC present. The police ordered them to stop work and to sit together in one location.

39. The police eventually permitted workers for AFSC to resume work and answer the AFSC's phone. Police also permitted the AFSC workers to make telephone calls, on the condition that they did not contact individuals and ask them to protest the police presence in the office.

40. The DJPC worker was effectively denied the use of her office during the three-and-one-half hour period that police occupied it. She was unable to answer the telephone, and had to ask permission from the police to make telephone calls. She wanted to call the chair of DJPC's board to let her know that the police were at the office. Kreutzer eventually granted permission to call the Board chair but emphasized that the Board chair would not be permitted to come to the office.

41. During the search of the DJPC's offices, one police officer videotaped the premises, while other officers took photographs.

42. One officer asked the DJPC employee for the location of the DJPC's mailing list. After discovering that it contained over 800 names and was stored on a computer, the officer threatened to obtain a warrant to confiscate the DJPC's computer if the employee did not provide a printout of the list forthwith. The worker printed out the membership list for the police officer.

43. Police rummaged through closets, desk drawers, cupboards, file cabinets, and file folders as they selected items to confiscate. Additional items, such as posters and handwritten pages from large easel pads, were removed from closets and photographed but not confiscated.

44. The defendants did not limit themselves to the items specified in the warrant. They seized a video titled, "We Said No Nukes," which belonged to AFSC. The police also seized numerous articles, posters, pamphlets, correspondence, writings, mailing lists, media contact lists, phone tree lists, and other written material that was not specified in the already vague and over-broad warrant. They confiscated handwritten notes from board meetings, including notes about what might be included in a forthcoming issue of the organization's newsletter, The Mustard Seed. Police also seized copies of the newsletter, in both preliminary paste-up versions and in final printed form.

45. Police also intercepted and confiscated an envelope addressed to Kohl's management that contained individually-signed letters from Kohl's shoppers expressing their support for the union workers in Nicaragua. Police confiscated the only copies of these communications, thus preventing them from reaching the intended recipient.

46. The police compiled an inventory of the materials seized. The police descriptions in the inventory include the following:

- a. “Copy of Feb 2000 Waubunowin Newsletter - from blue literature rack in North Office (Library)”;
- b. “60 page membership roster for Denver Peace”;
- c. “Mustard Seed Newsletter (Bookcase outside of DJPC office)”;
- d. “Kohl’s Sweatshop Company Flier (Bookcase outside of DJPC Office)”;
- e. “Three large envelopes address to DJPC (Bookcase outside of DJPC Office)”;
- f. “Award Night Brochure (DJPC Office)”;
- g. “Board of Directors List (DJPC Office small Bookcase)”;
- h. “Six Page Phone Tree List (DJPC Office small Bookcase)”;
- i. “Membership list”;
- j. “Phone & email list”;
- k. “Mustard Seed ‘Pasteup’ - DJPC Office - Desk”;
- l. “April Events in DC ‘Pasteup’ - DJPC Office - Desk”;
- m. “Caminos Sponsoring Committee List - DJPC Office - Desk”;
- n. “24 Page List of Names & Addresses - DJPC Office - Desk”;
- o. “One E-mail to DJPC (Desk in Office)”;
- p. “Notes on Yellow Paper (Desk in Office)”;
- q. “Roll A Dex Card for Dave Martin (Desk in Office)”;
- r. “Three page membership & youth delegation list (Desk in Office)”;
- s. “CHIAPAS Coalition calling list (Desk in Office)”;
- t. “Yellow Folder w/ Numerous Papers (Desk in Office)”;
- u. “Two Page Phones Email List (Mail Area DJPC)”;
- v. “Yellow Page w/ Names, PX numbers & Email Addresses (Mail Area - DJPC)”;

- w. “Five Pages of Kohl’s campaign (Mail Area - DJPC)”;
- x. “Large white Paper w/Notes (DJPC Mail Area)”;
- y. “Four Yellow Pages of Notes (DJPC Mail Area)”;
- z. Two Newspaper articles & photocopy of same (Small Bookcase DJPC office)”;
- aa. “Letter to Board Members (Mail Area DJPC)”;
- bb. “Photocopy of Letter (Mail Area DJPC)”;
- cc. “Two pages of anti-sweat[shop] holiday carols (Table in DJPC Office)”;
- dd. “Kohl’s Flier (Table in DJPC Office)”;
- ee. “Photocopy of Newsletter Page (Table in DJPC Office);
- ff. “Envelope to CEO of Kohl’s w/signed fliers inside (Table in DJPC Office)”;
- gg. “Folder (Kohl’s) w/numerous papers (Mail Area DJPC Office)”;
- hh. “Nine Pages of ‘Call for Action’ Brochure (Mail Area DJPC Office)”;
- ii. “One Video Tape ‘We Said No Nukes’ (Library Room)”;
- jj. “Eighteen home-made signs (South Office).”

47. None of the foregoing materials is evidence of crime, nor are such materials the fruits or instrumentalities of crime. On the contrary, they show that the DJPC engages in political expression and political association that are protected by the First Amendment.

48. On information and belief, Farley reviewed the inventory of seized materials that is described in paragraph 46. By actions and omissions, he ratified and approved the seizure of the materials described in paragraph 46.

After the Search

49. According to the police inventory, the DJPC membership list seized by the Golden police consisted of 60 pages. A police report states that it listed a total of 984 individuals.

50. The Golden police formulated a plan to call approximately every tenth person on the list to question them about the vandalism at Kohl's. The police recorded each of these telephone interviews.

51. In addition, the Golden police contacted each member of the DJPC board of directors, as well as additional individuals who were selected for questioning on the basis of their political activities and political associations.

52. The Golden Police contacted approximately 100 individuals whose names were obtained from the search of the DJPC office. The purported purpose of the calls was to ask whether any of the DJPC members or Board members had any information about the identity of the individuals responsible for the vandalism at Kohl's. None of the individuals contacted was able to provide any such information.

53. The foregoing police actions, all of which were undertaken at Farley's direction, would cause reasonable persons to be chilled in the exercise of their First Amendment rights of expression and political association. On information and belief, Farley was aware that the police actions he authorized and ratified posed a substantial risk of causing such a result.

54. As a proximate result of the illegal seizure of the DJPC membership list and the subsequent contacts from the Golden Police, a number of individuals on the illegally-seized membership list severed their ties to DJPC by asking the organization to remove their names from its membership list.

The Illegal Pat-Down Search of Espinosa

55. Several employees of either DJPC or AFSC were present while the police were searching the DJPC office. These individuals included Danielle Short, Kareen Erbe, Sharon King, and Larry Leaman-Miller.

56. Espinosa was not present when the police arrived. He eventually learned about the ongoing search when Danielle Short, his wife, telephoned him. After receiving the call, and growing concerned about his wife and his co-workers, Espinosa decided to come to the office. Espinosa believed that, given his knowledge of the location of DJPC's files, he could be of assistance.

57. Espinosa arrived at the DJPC's office at approximately 1:30 p.m. on December 14, 2000, while the search was underway.

58. When Espinosa entered the DJPC office, he was immediately approached by two police officers, who asked him why he was in the office. Espinosa explained that he was the DJPC's office administrator and that his wife worked for the AFSC and was present. The police asked him for identification, which Espinosa readily provided.

59. After Espinosa provided his identification, Ortiz immediately put his hands on Espinosa and conducted a pat-down search without consent. While conducting the pat-down search, Ortiz asked Espinosa if he had any knives or other weapons. Espinosa said he did not. Indeed, the frisk of Espinosa failed to disclose any weapons.

60. Prior to Espinosa's arrival at the office, all of the persons present had been asked to provide identification to the police, but none had been frisked. Espinosa was the only one to be frisked, and Espinosa was the only one with dark skin and an apparent Hispanic appearance.

61. When he conducted the pat-down frisk, Ortiz was not in possession of objective and articulable facts that would make a reasonable person suspect that Espinosa was involved or about to be involved in criminal activity.

62. Ortiz was not in possession of objective and articulable facts that would make a reasonable person suspect that Espinosa was armed.

63. The pat-down frisk of Espinosa violated his rights under the Fourth and Fourteenth Amendments to the Constitution.

The Custom, Policy, and Practice of the City and County of Denver

64. The pat-down frisk of Espinosa was carried out pursuant to, and was caused by, a custom, policy, and practice of the City and County of Denver.

65. It is the custom, policy, and practice of the City and County of Denver to authorize, tolerate, or permit police officers to conduct pat-down frisks on the basis of an officer's subjective exercise of discretion rather than the objective reasonable suspicion required by the Constitution.

66. It is also the custom, policy, and practice of the City and County of Denver to fail to provide effective supervision to ensure that officers follow constitutional standards when they conduct temporary detentions and pat-down frisks of persons they encounter.

67. The City and County of Denver does not require police officers to make any report or otherwise keep any contemporaneous notes that explain their reasons for conducting temporary detentions or pat-down frisks.

68. On information and belief, an officer conducting a stop and frisk is required to write a report only if the officer discovers additional facts that turn into probable cause that results in a summons, a seizure of contraband, or an arrest.

69. Thus, when Denver police officers conduct intrusions that constitute temporary seizures or limited searches of individuals who are clearly innocent, they do not memorialize the facts and circumstances on which they relied to justify their warrantless intrusions. Denver police officers are not required to memorialize the facts that they believe justify a temporary detention, nor are they required to memorialize the facts on which they rely for conducting a pat-down frisk.

70. By failing to require documentation memorializing the facts and circumstances of temporary detentions and pat-down frisks, the City and County of Denver provides an open opportunity for wholesale violations of individuals' constitutional rights. When supervisors do not have written reports to review, there is no mechanism to hold police officers accountable to the standards of the Constitution. Police officers are free to make, and do make, stops on the basis of insufficient evidence or impermissible reasons.

71. The Constitution permits police officers to conduct pat-down frisks only on the basis of reasonable suspicion that the individual is armed. When police officers are not required to make a record of their stops and frisks and are not required to memorialize their reasons, there is no opportunity for supervisors to review whether officers are adhering to the constitutional standard of reasonable suspicion. Without reporting requirements, police officers are free to act illegally on the basis of hunches or prejudices, without any effective review of what they are doing and why.

72. The City and County of Denver is deliberately indifferent to the risk that police officers may violate citizens' rights by conducting pat-down searches without adequate grounds.

FIRST CLAIM FOR RELIEF

(Privacy Protection Act of 1980, 42 U.S.C. § 2000aa, et seq.)

(Claim by DJPC against City of Golden, City and County of Denver, and Pautler)

73. The allegations of paragraphs 1-72 are incorporated by reference as though fully set forth herein.

74. The activities of DJPC include disseminating views, opinions, and information to the public, both within Colorado as well as in other states and other countries. DJPC accomplishes this dissemination of information through its newsletter, The Mustard Seed; its web site at www.djpc.org; and also through pamphlets, leaflets, posters, picket signs, articles, letters-to-the-editor, email alerts, telephone trees, and other means of communication.

75. The Defendants knew, or, upon reasonable investigation should have known, of DJPC's expressive and communicative activities.

76. In connection with the investigation of a criminal offense, police officers working for the City of Golden and the City and County of Denver unlawfully searched for and unlawfully confiscated work product materials and documentary materials that are expressly protected by the Privacy Protection Act of 1980, 42 U.S.C. §§ 2000aa(a) and (b). Pautler shares liability for the unlawful search and seizure because his erroneous and deficient legal advice to the Golden officers was a proximate cause of the illegal search and seizure.

77. At no time did the City of Golden, the City and County of Denver, or Pautler attempt to subpoena any materials from DJPC. Instead, the City of Golden, the City and County of Denver, and Pautler relied on search and seizure as a first resort.

78. None of the exceptions in the Privacy Protection Act of 1980 applies to the search and seizure of the work product materials and documentary materials in this case.

79. The police officers who participated in the search of the DJPC office were acting within the scope of their employment and under color of their office or employment.

80. The City of Golden and the City and County of Denver are liable for their employees' violations of the Privacy Protection Act of 1980.

81. On information and belief, Pautler is personally liable for violations of the Privacy Protection Act, pursuant to 42 U.S.C. § 2000aa-6(a)(2).

82. DJPC is entitled to the statutory minimum liquidated damages of \$1,000 pursuant to 42 U.S.C. § 2000aa-6(f); reasonable attorney's fees and costs pursuant to 42 U.S.C. § 2000aa-6(f); and such additional relief as the Court deems just.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983; First and Fourth Amendments)

(Claim by DJPC against Farley, Kreutzer, and Pautler)

83. The allegations of paragraphs 1-82 are incorporated by reference as though fully set forth herein.

84. The First Amendment protects DJPC's rights to freedom of speech and association, and the Fourth Amendment protects DJPC's right to be free from unreasonable searches and seizures.

85. The search warrant failed to meet the particularity requirement of the Fourth Amendment.

86. The search warrant authorized the seizure of materials that are neither evidence, fruits, nor instrumentalities of crime and that are clearly protected by the First Amendment rights of expression and association.

87. A reasonably well-trained officer would have known that Kreutzer's affidavit failed to establish probable cause to seize the items described in paragraph 34 of this Complaint, such as the membership list and expressive materials listed on the warrant. A reasonably well-trained officer would have known that he or she should not have applied for a warrant to seize those materials. If Kreutzer had not omitted material facts from the affidavit, the lack of probable cause would have been even more apparent.

88. A reasonably well-trained officer would have known that the warrant on its face purported to authorize the seizure of materials that could not be seized consistent with the First and Fourth Amendments. A reasonably well-trained officer would also have known that the warrant on its face was overly vague in describing expressive materials to be seized, thus violating the principle that the particularity requirement must be enforced with scrupulous exactitude in cases implicating First Amendment interests.

89. In addition, a reasonably well-trained officer would have known that the seizure of membership lists, phone tree lists, and expressive materials not listed on the warrant further violated clearly established law regarding the First Amendment and the particularity requirement of the Fourth Amendment.

90. A reasonably well-trained officer would have known that the seizure of the materials described in paragraph 46 violated clearly established law.

91. DJPC is entitled to an award of nominal damages from Farley, Kreutzer, and Pautler; an award of reasonable attorney's fees and costs; and such additional relief as the Court deems just.

THIRD CLAIM FOR RELIEF

(First and Fourth Amendments; Privacy Protection Act of 1980; Injunctive Relief)

(Claim by DJPC against City of Golden and David J. Thomas)

92. The allegations of paragraphs 1-91 are incorporated by reference as though fully set forth herein.

93. On information and belief, copies and/or originals of the materials illegally confiscated from DJPC are in the custody and control of the City of Golden and David J. Thomas, District Attorney for the First Judicial District.

94. The failure to return the originals and all copies of the illegally confiscated materials constitutes a continuing and ongoing seizure that violates the First and Fourth Amendments as well as the Privacy Protection Act of 1980.

95. DJPC is entitled to an order directing the City of Golden and David J. Thomas, District Attorney for the First Judicial District, to return the illegally seized materials and all copies made of them as well as reasonable attorney's fees and costs; and such additional relief as the Court deems just.

FOURTH CLAIM FOR RELIEF

(42 U.S.C. § 1983; Fourth and Fourteenth Amendments)

(Claim by Espinosa against City and County of Denver and Ortiz)

96. The allegations of paragraphs 1-94 are incorporated by reference as though fully set forth herein.

97. The Fourth Amendment protects Espinosa's right to be free from unreasonable searches and seizures. The Equal Protection Clause of the Fourteenth Amendment protects Espinosa's right to be treated equally under the Constitution and the laws of the United States.

98. Ortiz did not have reasonable grounds to suspect that Espinosa was armed. Nevertheless, Ortiz subjected Espinosa to a pat-down frisk.

99. Espinosa did not consent to the pat-down frisk.

100. Ortiz carried out an unreasonable search of Espinosa's person.

101. The pat-down frisk violated Espinosa's right under the Fourth Amendment to be free of unreasonable searches and seizures.

102. The violation of Espinosa's Fourth Amendment rights was carried out pursuant to, and was caused by, a custom, practice, and policy of the City and County of Denver.

103. Non-Hispanic individuals who were similarly situated to Espinosa during the search of the DJPC offices were not subjected to a pat-down frisk. Espinosa was the only individual subjected to a pat-down frisk.

104. Upon information and belief, Ortiz intentionally subjected Espinosa to disparate adverse treatment on the basis of his race or national origin, in violation of the Equal Protection Clause.

105. Espinosa is entitled to an award of nominal damages from Ortiz and the City and County of Denver for the violation of his Fourth Amendment rights; an award of nominal damages from Ortiz for the violation of his right to the equal protection of the laws; reasonable attorney's fees and costs; and such additional relief as the Court deems just.

PRAYER FOR RELIEF

WHEREFORE, DJPC respectfully requests the following relief:

- a. An award of \$1,000 in liquidated damages, pursuant to the Privacy Protection Act of 1980;
- b. An award of nominal damages pursuant to 42 U.S.C. § 1983 from the individuals responsible for the illegal search and seizure of protected materials at its offices;
- c. A preliminary and permanent injunction ordering the City of Golden and David J. Thomas to return the illegally confiscated materials and any copies made of them;
- d. An award of costs and attorney's fees; and
- e. Such additional relief as the Court deems just.

WHEREFORE, Espinosa respectfully requests the following relief:

- a. An award of nominal damages from Ortiz;
- b. An award of nominal damages from the City and County of Denver;
- c. An award of costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- d. Such additional relief as the Court deems just.

DJPC and Espinosa hereby demand a trial by a jury of six.

Dated: February 28, 2003

Respectfully submitted,

LINO LIPINSKY de ORLOV
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