

# McPHERSON SQUARE: WHO MADE THE DECISION TO ALLOW INDEFINITE CAMPING IN THE PARK?

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## HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH CARE, DISTRICT OF  
COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES

OF THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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## CONTENTS

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	Page
Hearing held on January 24, 2012 .....	1
Statement of:	
Quander, Paul, Jr., Deputy Mayor for Public Safety and Justice, District of Columbia, accompanied by Cathy Lanier, chief, Metropolitan Police Department and Mohammad Akhter, M.D., director, D.C. Department of Health; Timothy Zick, Cabell research professor of law, William and Mary School of Law; and Jonathan Jarvis, Director, National Park Service .....	15
Jarvis, Jonathan .....	33
Quander, Paul, Jr. ....	15
Zick, Timothy .....	25
Letters, statements, etc., submitted for the record by:	
Cummings, Hon. Elijah E., a Representative in Congress from the State of Maryland, prepared statement of .....	13
Davis, Hon. Danny K., a Representative in Congress from the State of Illinois, prepared statement of .....	7
Issa, Hon. Darrell E., a Representative in Congress from the State of California, information concerning Occupy D.C. ....	3
Jarvis, Jonathan, Director, National Park Service, prepared statement of .....	35
Quander, Paul, Jr., Deputy Mayor for Public Safety and Justice, District of Columbia, prepared statement of .....	18
Zick, Timothy, Cabell research professor of law, William and Mary School of Law, prepared statement of .....	27



## **McPHERSON SQUARE: WHO MADE THE DECISION TO ALLOW INDEFINITE CAMPING IN THE PARK?**

**TUESDAY, JANUARY 24, 2012**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON HEALTH CARE, DISTRICT OF  
COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:30 a.m. in room 2154, Rayburn House Office Building, Hon. Trey Gowdy (chairman of the subcommittee) presiding.

Present: Representatives Gowdy, Issa, McHenry, DesJarlais, Walsh, Cummings, Norton, Clay and Davis.

Staff present: Ali Ahmad, communications advisor; Kurt Bardella, senior policy advisor; Michael R. Bebeau and Gwen D'Luzansky, assistant clerks; Robert Borden, general counsel; Will L. Boyington and Drew Colliatie, staff assistants; Molly Boyd, parliamentarian; Lawrence J. Brady, staff director; Joseph A. Brazauskas and David Brewer, counsels; Sharon Casey, senior assistant clerk; John Cuaderes, deputy staff director; Howard A. Denis, senior counsel; Adam P. Fromm, director of Member services and committee operations; Linda Good, chief clerk; Christopher Hixon, deputy chief counsel, oversight; Ryan Little, James Robertson, and Michael Whatley, professional staff members; Mark D. Marin, director of oversight; Jeff Wease, deputy CIO; Jaron Bourke, minority director of administration; Beverly Britton Fraser, Yvette Cravins, and Brian Quinn, minority counsels; Kevin Corbin, minority deputy clerk; Carla Hultberg, minority chief clerk; Paul Kincaid, minority press secretary; Adam Koshkin, minority staff assistant; Lucinda Lessley, minority policy director; William Miles, minority professional staff member; and Susanne Owen, minority health policy advisor.

Mr. GOWDY. The committee will come to order.

This is a hearing on McPherson Square: Who Made the Decision to Allow Indefinite Camping in the Park?

I will recognize myself for an opening statement and yield to the chairman of the full committee, the gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I ask unanimous consent that a statement prepared by the individuals or group of individuals currently residing in McPherson

Square as part of Occupy D.C. be placed into the record in its entirety.

Mr. GOWDY. Without objection.

[The information referred to follows:]

*The following statement was approved by the Occupy DC (McPherson Square) General Assembly on January 21, 2012, to be read at a hearing regarding McPherson Square this Tuesday in the Subcommittee on Health Care, District of Columbia, Census and the National Archives, part of the Oversight Committee of the U.S. House of Representatives.*

Like so many Americans whose voices are not heard in the halls of Congress, we have been precluded from speaking today on a matter that directly concerns us. That we have to ask a member of Congress to speak here for us is symbolic of the disenfranchising top-down nature of the government we are fighting to democratize.

Citizens of a free country should not have to ask for permission to occupy public spaces. Our occupation of McPherson Square is an expression of our right to free speech and peaceful assembly. We are maintaining a site of protest — a physical presence that gives visibility and voice to our dissent. We are creating a space in which free speech flourishes — not only the speech of occupiers, but that of the general public, the empowered and the disenfranchised alike.

Like most people, the members of Occupy DC at McPherson Square do not relish being in uncomfortable conditions that humans without housing have endured for millenia. We do so because it has become a necessary tactic to express our concern for the country's direction in a way that will maintain public attention. Two out of every three Americans, incidentally, agree that our country is headed in the wrong direction. A far smaller percentage approves of the job Congress is doing. And while foreclosures have become a hallmark of modern America, the solutions to our country's numerous problems do not include suppressing free speech and evicting peaceful patriots from their tents.

Representative Issa's motivations for this investigation are clearly political. A vote with him is a symbolic vote for the status quo of money in politics over the value of grassroots democratic expression for the betterment of our country.

The very existence of a committee of politicians controlling a city none of them were elected in is offensive. Though McPherson Square happens to have been declared federal land, D.C.'s forced submission to congressional control is the height of hypocrisy for a nation that considers itself the global arbiter of democracy.

The members of Occupy DC at McPherson have worked hard to build, clean and maintain our site of protest since the beginning of October. We are happy to work with the National Park Service, Department of Health, and the city of Washington to improve the health and safety of our conditions. Unfavorable conditions in the park are a distraction from Congress getting to work on the many challenges our country faces today. Let's work together to improve the conditions of our site and to make this country a better place.

###

Mr. ISSA. I thank you. I yield back.

Mr. GOWDY. I thank the gentleman from California.

Among the pillars that undergird this grand republic, at least two are at bar this morning: number one, the freedom of speech and expression; and two, a respect for the rule of law. These two principles are entirely consistent, indeed, they have to be consistent. They can and they do coexist.

Today we are not here to discuss the merits or the demerits of the Occupy movement, at least, I am not. I am here to try and glean what process, if any, the National Park Service goes through in determining whether to allow a residential encampment among the homes and offices in a busy area in downtown D.C., especially one where camping is strictly prohibited.

It is impossible to explore the role of the National Park Service without also hearing from the leaders within the District of Columbia. I suspect the witnesses from the District of Columbia will testify, as has been publicly reported, with respect to any adverse consequences associated with this encampment.

We have all read, with outrage and shock, about an infant abandoned in a tent on one of the coldest days of the year. Mayor Gray wrote the Park Service on January 12th to warn them of dangerous rodent infestation, the risk of food-borne illnesses and other potentially deleterious, if not deadly, concerns such as hypothermia and carbon monoxide poisoning.

The District of Columbia and its leaders are in a completely untenable position. It is their responsibility to protect the health and safety of its residents, including those residents in McPherson Square; however, they do not have the authority to make the decision whether or not to allow the camp to exist.

The Federal Government owns the land and governs its use, sharing responsibility for the health and safety of those in the park. The Department of Interior has taken responsibility for the decision to allow the indefinite overnight camping at McPherson Square and the process by which they reached this decision is, at best, curious and legally fragile.

Many of us look forward to today's hearing because we were under the apparent misapprehension that camping was illegal in McPherson Square. We look forward to hearing the National Park Service explain the difference between camping and a 24-hour vigil, especially when that 24-hour vigil lasts several months.

The evidence is clear, at least in my judgment, that sleeping, cooking and camping are taking place in McPherson Square, despite protestations to the contrary, and apparently despite the clear prohibition against camping.

To sum, issues of public safety for the protestors and others is important. Issues of free speech are important. Issues of cost and who bears the costs are important. It is manifestly unfair that the District of Columbia assume all the costs and liabilities for decisions made by the National Park Service.

At the bottom of it all is the issue of fair and equal application of the law because from this vantage point, it appears that there are at least two very different sets of rules. With the spring and summer a short distance away, I find it curious that tourists cannot come and pitch a tent in McPherson Square if they are camp-

ing for fun, but if they are camping in protest of fun, the National Park Service would welcome them.

Mr. GOWDY. With that, I would recognize the gentleman from Illinois, the ranking member, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Chairman, the First Amendment of the U.S. Constitution reads, "Congress shall make no law abridging the freedom of speech or of the press or the right of people peaceably to assemble and to petition the government for redress of grievances."

Of course the right to protest is not unrestricted. The Supreme Court has determined that certain limitations can be imposed to strike a delicate balance between order and the right to be heard. In a public forum, the government may restrict expression with time, place and manner regulations. However, restrictions cannot be based upon the content of the speech and the regulation must not be substantially broader than necessary to achieve the government's interest.

The history of dissent is a long and productive one from the abolitionist flyers to the labor movement of the early 20th century, to women's suffrage, to the civil rights marches and peace protests. Our country has become a more inclusive and enlightened Nation because people spoke truths to power.

Dissenters met government resistance but persevered. Around the clock vigils and sit-ins are nothing new. The students that maintained their seats at a North Carolina Woolworth's lunch counter ignited a movement to challenge injustice and helped change America. I understand that to be a part of civil disobedience.

I encourage those who seek government redress to operate in a peaceful manner. That being said, I certainly appreciate the National Park Service and the U.S. Park Police measured approach to D.C. occupiers. We have not seen the disarray here that has been broadcast across our television screens from other cities.

The Federal agencies overseeing the lands and parks have a specific role in insuring that the First Amendment rights are respected and protected. The District of Columbia, as a protest site, is of particular significance and importance. The District has a history of hosting some of the most significant protest activities of the modern era. Accordingly, in 2011, there were over 600 First Amendment activities on our national park lands.

I find it curious that this particular demonstration has risen to the level of a congressional hearing. The Occupy D.C. movement has not encountered widespread arrests; the vigils are in a concentrated area; the District receives funds for reimbursement annually for such activities. Further, the discretion allowed the Park Service allows for a reasonable approach of compliance, banning enforcement or expulsion.

I believe going forward the Occupy D.C. movement should continue to be closely monitored to ensure proper safety, health and sanitation. Interaction and cooperation of the various agencies to monitor the site should be encouraged. However, this protest, in its current form, does not rise to the level of necessary congressional intervention. This subcommittee should defer to the discretion of

the National Park Service and err on the side of the First Amendment.

I would like to yield for just a minute to myself to read a portion of the statement from the Occupy D.C. General Assembly submitted to staff.

“Like so many whose voices are not heard in the halls of Congress, we have been precluded from speaking today on a matter that directly concerns us. That we have to ask a Member of Congress to speak for us here is symbolic of the disenfranchised and top down nature of the government that we are fighting to democratize.”

“Citizens of a free country should not have to ask for permission to occupy public spaces. Our occupation of McPherson Square is an expression of our First Amendment right to free speech and peaceful assembly. We are maintaining a site of protest, a physical presence that gives visibility and voice to our dissent. We are creating a space in which free speech flourishes, not only the free speech of occupiers, but that of the general public, the empowered and the disenfranchised alike.”

“Like most people, the members of Occupy D.C. at McPherson Square do not relish being in uncomfortable conditions that humans without housing have endured for a millennia. We do so because it has become a necessary tactic to express our concern for the Country’s direction in a way that will maintain public attention.”

“Two out of three Americans, incidentally, agree that our Country is headed in the wrong direction. A far smaller percentage approve of the job Congress is doing. While foreclosure has become a hallmark of modern America, the solutions to our Country’s numerous problems do not include suppressing free speech and evicting patriots from their tents.”

“The very existence of a committee of politicians controlling the city, none of them were elected and it is offensive, though McPherson Square happens to have been declared Federal land. D.C.’s full submission to congressional control is the height of hypocrisy for a nation that considers itself the global arbiter of democracy.”

Mr. Chairman, I thank you for the opportunity and yield back the balance of our time.

[The prepared statement of Hon. Danny K. Davis follows:]

DARRELL E. ISSA, CALIFORNIA  
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**Opening Statement**  
**Rep. Danny K. Davis, Ranking Member**

**Subcommittee on Healthcare, District of Columbia, Census, and the National Archives**  
**Hearing on “McPherson Square: Who Made the Decision to Allow Indefinite Camping in**  
**the Park”**

1/24/12

Thank you, Mr. Chairman.

The First Amendment reads, “Congress shall make no law . . . abridging the freedom of speech or of the press, or the right of people peaceably to assemble, and to petition the government for redress of grievances.” Of course, the right to protest is not unrestricted. The Supreme Court has determined that certain limitations can be imposed to strike a delicate balance between order and the right to be heard. In a public forum, the government may restrict expression with time, place and manner regulations. However, restrictions cannot be based upon the content of the speech and the regulation must not be “substantially broader than necessary to achieve the government’s interest.”

The history of dissent in America is a long and productive one. From the Abolitionists’ flyers, to the Labor Movement of the early 20<sup>th</sup> Century, to women’s suffrage, to the Civil Rights marches and peace protests, our country has become a more inclusive and enlightened nation because people spoke truth to power. Dissenters met government resistance, but persevered. Around the clock vigils and “sit-ins” are nothing new. The students that maintained their seats at a North Carolina Woolworth’s lunch counter ignited a movement to challenge injustice and helped changed America. I understand civil disobedience. But, I encourage those who seek government redress to operate in a peaceful manner.

That being said, I certainly appreciate the National Park Service and the U.S. Park Police’s measured approach to the DC Occupiers. We have not seen the disarray here that has been broadcast across our television screens from other cities. The federal agencies overseeing the lands and parks have a specific role in ensuring that First Amendment rights are respected and protected.

The District of Columbia as a protest site is of particular significance and importance. The District has a history of hosting some of the most significant protest activities of the modern era.

Accordingly in 2011, there were over 600 First Amendment activities on our national park lands. So I find it curious that this particular demonstration has risen to the level of a Congressional hearing. The Occupy DC movement has not encountered widespread arrests. The vigils are in a concentrated area. The District receives funds for reimbursement annually for such activities. Further, the discretion allowed the Park Service allows for a reasonable approach of "compliance, then enforcement or expulsion". I believe going forward, the Occupy DC movement should continue to be closely monitored to ensure proper safety, health and sanitation. Interaction and cooperation of the various agencies to monitor the site should be encouraged. However, this protest, in its current form, does not rise to the level of necessary congressional intervention. This subcommittee should defer to the discretion of the National Park Service and err on the side of the First Amendment.

*I would now like to yield myself an additional few moments to read a portion of the statement from the Occupy DC General Assembly submitted to staff.*

Like so many Americans whose voices are not heard in the halls of Congress, we have been precluded from speaking today on a matter that directly concerns us. That we have to ask a member of Congress to speak here for us is symbolic of the disenfranchising top-down nature of the government that we are fighting to democratize.

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The very existence of a committee of politicians controlling a city none of them were elected in is offensive. Though McPherson Square happens to have been declared federal land, DC's forced submission to congressional control is the height of hypocrisy for a nation that considers itself the global arbiter of democracy.

The members of Occupy DC at McPherson Square have worked hard to build, clean and maintain our site of protest since the beginning of October. We are happy to work with the National Park Service, Department of Health, and the city of Washington, DC to improve the health and safety of our conditions. Unfavorable conditions in the park are a distraction from our constitutionally guaranteed free expression, just as this hearing is a distraction from Congress getting to work on the many challenges our country faces today. Let's work together to improve the conditions of our site and to make this country a better place.

Thank you, Mr. Chairman for your indulgence. I yield my remaining time.

Mr. GOWDY. I thank the gentleman from Illinois.

The Chair will now recognize the gentleman from California, the chairman of the full committee, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

If this were about protest today, we would not be having this hearing. I was here May 4, 1971, the first anniversary of the killings at Kent State in which the Mall was filled with protestors, anti-war protestors and protestors over the campus disruptions and the early dismissal of universities throughout the country as the result of their law-abiding protests.

The fact is we are all here respecting and promoting the idea that D.C. is and will continue to be a place for protests to occur. If anything, I believe we facilitate it like no other city in the United States and I want to continue to do so.

Mr. Chairman, let me give you a fairly straightforward number. I am not the smartest guy in the world but I looked up that an acre is roughly 208 feet by 208 feet, so 1.66 acres, the size of this square, makes it one of the smallest parks that the Park Service oversees.

If we are to say that any place here in the District or around the country for a protest can become a campground simply because someone is protesting, as we hear from Mr. Jarvis and others, we are basically going to have to figure out a way to put showers, rest-rooms and other sanitary requirements in parks that may be an acre or two. We are going to have to station park rangers to do their job because not all those who would choose to camp can be trusted the way so far this has worked out. We have challenges that we have to face.

The real reason we have the Park Service here today is to find out why the District of Columbia for one, and it does not matter which side, ideologically driven protest is breaking all of its own rules, citing some First Amendment that if you cited uniformly will change the whole dimension of where people get to go to national parks.

Plenty of national parks take everyone out, if necessary at gunpoint, at dark, and tell them they are no longer welcome in the park, that their hours of operation are dawn to dusk or some other time. There are all kinds of areas in which you can or cannot be in various Federal lands. That is not what we are debating here.

We are debating the uniform use of a designation of campground versus not campground and more importantly, we will hear from two distinguished members of the District of Columbia, we are dealing with the fact the District of Columbia is bearing the brunt of this lack of uniformity, lack of enforcement, even when there is a Supreme Court decision that makes it very clear that campers should not be there.

Protestors during our hours of operation, actually protestors 24 hours a day, they want to come with candles and stand, that is fine. Freedom is not an absence of uniform rules. Yesterday, there was a National Right to Life protest in the city. They came, they protested and they left. If they had chosen to stay, they would have been expected to get hotel rooms or in some other lawful way, to find accommodations.

We are going to hear from the city what this is doing to them. Hopefully, we will hear what would happen if this became sort of the law of the land, whether it was for the left or the right. How would we deal with it? What would we have to fund the city? What would be the sanitary requirements and the like? Ultimately, would this simply become I protest, therefore, I can stay anywhere I want?

Mr. Chairman, I asked to have the Occupy D.C. statement put in the record. I appreciate that you did so at the very opening. I want them to be heard, but candidly, I want to hold our government agencies, Federal Government agencies, to respect a uniform set of rules and not choose which First Amendment advocates to choose.

We will hear in their opening statements today, exactly that. We will hear that this is narrowly trying to balance. The Supreme Court has already spoken on what the balance is. They have a clear ability and requirement to prohibit overnight camping according to their own rules and they are not doing it.

I am deeply disappointed. I feel the Park Service has entered into an ideological fray by making this decision on behalf of the administration when, in fact, the decision could have been very clear. Stay awake, stay vertical, do not be camping here, and you are welcome to stay and have an active protest as long as you want. When you need to sleep, go elsewhere and come back. When you need to use the restroom facilities, showers and other hygienic requirements that are not actively available in this very, very small, 1.66 acres, go elsewhere and come back.

That is the message we should have sent and as the committee that oversees and has responsibility to protect the rights, privileges and candidly, obligation that we put on the District of Columbia, we must first and foremost remember this is the District of Columbia's burden being borne by this lack of uniformity. If we do not find a common and predictable set of rules for the future, then we put the District of Columbia in a very untenable position that while welcoming legitimate protests, they find themselves unable to predict who will sleep where and what they will or will not be able to do with it.

Mr. Chairman, this is a narrow hearing. I appreciate your calling it. I believe the issue is important, albeit it very, very much about, as I previously said, what we, as a committee, need to make sure is fair and right for the District of Columbia.

I appreciate your indulgence and yield back.

Mr. GOWDY. I thank the chairman.

The Chair will now recognize the gentleman from Maryland, the ranking member of the full committee, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Gowdy and Ranking Member Davis, for holding today's hearing and providing us with an opportunity to speak on behalf of the millions of Americans who are demanding justice and fairness from both their government and elements of the private sector.

In fact, Mr. Chairman, in many ways, I find it baffling that we are actually convening this morning's hearings to debate the merits of allowing Americans to use their public parks as a venue in which to express their First Amendment rights, a practice that is

as old as our republic and as fundamental to our democracy as our Constitution which guarantees the right of assembly.

Even more alarming is that the majority has fast-tracked today's hearing while repeatedly ignoring and dragging their feet when I requested to fully investigate mortgage servicers' alleged abuses against American families. Given the extent of the foreclosure crisis and harm it has caused to many homeowners across the Nation, I am deeply concerned about the committee's failure to use its investigative power to protect American consumers or examine the numerous allegations of wrongdoing by banks.

I have repeatedly raised these concerns and today I sent a letter to the chairman renewing my request for a comprehensive investigation into wrongful foreclosures and other abuses by mortgage servicing companies.

While neglecting the harm that many Americans are suffering at the hands of mortgage servicers, the majority has leapt to investigate whether banks have been the victims of abuse from American citizens. The majority sent letters to several banks requesting information that supports the highly improbable allegation that representatives of the Occupy movement attempted to extort major banks. The responses have stated that the banks are not aware of any instances of the alleged conduct.

I too want to welcome our witnesses and thank you for agreeing to come before us today.

The District of Columbia is no stranger to the host of challenges and benefits that have come with being the home of the national government in the world's oldest democracy. Given the constant stream of citizen demonstrations, special events, marches and petitions for redress of grievances, I recognize that balancing the right of our fellow citizens to assemble peacefully while simultaneously protecting the health, safety and property of the city's residents and visitors is no easy task. Therefore, I applaud both the city government and the myriad of Federal agencies that work collectively and routinely to balance these interests.

But, folks are hurting and struggling as many Americans presently are, it is all the more critical that they be able to raise their voices and demand change. The recent Occupy movement that has emerged in cities and communities across this great Nation represents the peoples' demand for progress. People want jobs, they want better treatment, they want adequate housing and most importantly, they want action, and they have the constitutional right to make their voices heard.

While practical considerations associated with the prolonged presence of Occupy D.C. protestors at McPherson Square certainly must certainly be addressed, concerns over grass seeds should not outweigh grassroots efforts to seek improvements and help for our most vulnerable citizens. Nor should rats be allowed to stand in the way of the demand for real reform, especially when there are easy ways to rectify such problems at limited costs.

A little over a week ago, our country came together to celebrate the life and the legacy of the legendary Reverend Dr. Martin Luther King, Jr. He stood for equal opportunity and equal rights for all. Dr. King exemplified how the peaceful exercise of the rights enshrined in our Constitution can truly change the world. Reverence

for these rights must remain at the heart of all that we are as a nation.

Again, I want to thank each of our witnesses for coming before us today. I especially want to express my heartfelt sympathy to you, Dr. Jarvis, for your agency's recent loss of Park Ranger Margaret Anderson in Mt. Rainier, Washington. It is truly an unfortunate reminder that our Federal public servants are, in fact, exposed to significant risks while performing their daily duties.

With that, Mr. Chairman, I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

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CHAIRMAN

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ONE HUNDRED TWELFTH CONGRESS

**Congress of the United States**

**House of Representatives**

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**Opening Statement**  
**Rep. Elijah E. Cummings, Ranking Member**  
**Committee on Oversight and Government Reform**

**Subcommittee on Health Care, District of Columbia, Census and National Archives**  
**Hearing on "McPherson Square: Who Made the Decision to Allow Indefinite Camping in**  
**the Park?"**

**January 24, 2012**

Thank you, Chairman Gowdy and Ranking Member Davis, for holding today's hearing and providing us an opportunity to speak up on behalf of the millions of Americans who are demanding justice and fairness from both their government and elements of the private sector.

In fact, Mr. Chairman, in many ways I find it baffling that we are actually convening this morning's hearing to debate the merits of allowing Americans to use their public parks as a venue in which to express their First Amendment rights, a practice that is as old as our Republic and as fundamental to our Democracy as our constitution, which guarantees the right of assembly.

Even more alarming is that the majority has fast tracked today's hearing, while repeatedly ignoring and dragging their feet on our request to fully investigate mortgage servicer's alleged abuses against American families. Given the extent of the foreclosure crisis and the harm it has caused so many homeowners across the nation, I am deeply concerned about the Committee's failure to use its investigative power to protect American consumers or examine the numerous allegations of wrongdoing by banks.

I have repeatedly raised these concerns – and today, I sent a letter to the Chairman renewing my request for a comprehensive investigation into wrongful foreclosures and other abuses by mortgage servicing companies.

While neglecting the harm that many Americans are suffering at the hands of mortgage servicers, the Majority has leapt to investigate whether banks have been the victims of abuse from American citizens.

The Majority sent letters to several banks requesting information that supports the highly improbable allegation that representatives of the Occupy movement attempted to extort major

banks. The responses have stated that the banks are not aware of any instances of the alleged conduct.

That said, I do want to welcome our witnesses and thank you for agreeing to come before us today.

The District of Columbia is no stranger to the host of challenges and benefits that come with being home to the national government in the world's oldest democracy. Given the constant stream of citizen demonstrations, special events, marches and petitions for the redress of grievances, I recognize that balancing the right of our fellow citizens to assemble peacefully while simultaneously protecting the health, safety and property of the City's residents and visitors is no easy task.

Therefore, I applaud both the City government and the myriad of federal agencies that work collectively and routinely to balance these interests.

When folks are hurting and struggling, as many Americans presently are, it's all-the-more critical that they be able to raise their voices and to demand change. The recent Occupy Movement that has emerged in cities and communities across this great nation represents the people's demand for progress.

They want jobs, they want better treatment, they adequate housing and most importantly they want action. And they have the Constitutional right to make their voices heard.

While practical considerations associated with the prolonged presence of the Occupy DC protestors at McPherson Square must certainly be addressed, concerns over grass seeds shouldn't outweigh grassroots efforts to seek improvements and help for our most vulnerable citizens, nor should rats be allowed to stand in the way of the demand for real reform, especially when there are easy ways to rectify such problems at limited cost.

A little over a week ago, our country came together to celebrate the life and legacy of the legendary Reverend Dr. Martin Luther King, Jr., who stood for equal opportunity and equal rights for all. Dr. King exemplified how the peaceful exercise of the rights enshrined in our Constitution can truly change the world. Reverence for these rights must remain at the heart of all that we are as a nation.

Again, I thank each of our witnesses for coming before us today and I especially want to express my heartfelt sympathy to you, Director Jarvis, for your Agency's recent loss of Park Ranger Margaret Anderson in Mt. Rainer, Washington. It's truly an unfortunate reminder that are federal public servants are in fact exposed to significant risks while performing their daily duties.

Mr. Chairman, I yield back.

Mr. GOWDY. I thank the gentleman from Maryland.

Members may have 7 days to submit opening statements and extraneous material for the record.

We will now welcome our distinguished panel of witnesses: Mr. Paul Quander is the deputy mayor for public safety and justice for the District of Columbia; Chief Cathy Lanier is the chief of the Metropolitan Police Department; Dr. Mohammad Akhter is the director of the D.C. Department of Health; Mr. Timothy Zick is the Cabell research professor of law at William and Mary School of Law; and Mr. Jonathan Jarvis is the Director of the National Park Service.

We will now hear your opening statements. We will start with you, Mr. Quander and go from my left to right, your right to left. The lights mean what they traditionally mean in life. Green means go; yellow means speed up and go as fast as you can; and red means stop.

Pursuant to committee rules, we will swear the witnesses. I ask that you rise and raise your right hands.

[Witnesses sworn.]

Mr. GOWDY. Mr. Quander, we will now recognize you for your opening statement.

**STATEMENTS OF PAUL QUANDER, JR., DEPUTY MAYOR FOR PUBLIC SAFETY AND JUSTICE, DISTRICT OF COLUMBIA, ACCOMPANIED BY CATHY LANIER, CHIEF, METROPOLITAN POLICE DEPARTMENT AND MOHAMMAD AKHTER, M.D., DIRECTOR, D.C. DEPARTMENT OF HEALTH; TIMOTHY ZICK, CABELL RESEARCH PROFESSOR OF LAW, WILLIAM AND MARY SCHOOL OF LAW; AND JONATHAN JARVIS, DIRECTOR, NATIONAL PARK SERVICE**

**STATEMENT OF PAUL QUANDER, JR.**

Mr. QUANDER. Good morning, Chairman Gowdy and members of the Committee on Oversight and Government Reform.

Thank you for the opportunity to present testimony and observation on issues surrounding Occupy D.C. encampments located at Freedom Plaza and McPherson Square.

My name is Paul Quander and I serve as the deputy mayor for public safety and justice in the District of Columbia. I am joined today by Chief Cathy Lanier of the Metropolitan Police Department and Dr. Mohammad Akhter, Director of the District of Columbia Department of Health.

On October 6, 2011, the National Park Service granted permission to and allowed two very distinct Occupy D.C. groups to establish sites upon Federal property for the purpose of protesting a variety of issues. These sites and demonstrations were and continue to be located at Freedom Plaza, 14th and Pennsylvania Avenue, N.W., three blocks southeast of the White House and McPherson Square, two blocks northwest of the White House at 15th and K Street, N.W., Washington.

During the first week of the Occupy movement, there were approximately 150 protestors at Freedom Plaza and 250 at McPherson Square. Since Thanksgiving, the number of occupants has fluctuated with the Freedom Plaza group numbering approximately 30

to 40 participants and the McPherson Square contingent numbering about 25 to 50 participants.

Initially, a significant number of Metropolitan Police officers were deployed to address Occupy D.C., including the Metropolitan Police Department's Special Operations Division, SOD, as well as the Civil Disturbance Unit which is staffed by patrol members. After the first week, however, MPD was able to decrease the resources used for Occupy D.C. except for major movements or incidents.

In the ensuing weeks of the encampments, there were approximately four occasions which required the Metropolitan Police Department to detail more than one or two officers per patrol district per shift from the Civil Disturbance Units. These events included the Americans for Prosperity meeting at the Convention Center on November 4; the march on Key Bridge on November 17; the K Street protest on December 7; and the Occupy Congress march last week on January 17th. MPD staffing for those incidents ranged from 80 to 400 officers.

For the most part, protests and the occupants of the encampments have been peaceful. There have been the usual taunting and insulting of police, which is common. However, on a few occasions, the tactics of the protestors has become very aggressive and dangerous, resulting in injuries and situations where law-abiding citizens were unable to exit buildings or travel on our public roadways.

For instance, one incident at the Convention Center involved blocking entrances and exits to the Convention Center using children as impediments as well as physically challenging attendees of the events espousing opposing political views. These are all unacceptable tactics and potentially very harmful. Blocking traffic and jumping in front of vehicles is especially dangerous.

Furthermore, there have been incidents of destruction of property. Most worrisome has been the incidents of violence at McPherson Square such as the attacks on a Park Police officer and later an occupant of the encampment, both of which resulted in hospitalizations. Most recently we had the neglect of a 13-month-old child, barely clothed, who was left unattended by her father.

As of January 19th, the Metropolitan Police Department has arrested 68 individuals affiliated with the Occupy protest. An additional 13 protestors were arrested by another District Police force on the grounds of Franklin School. There have been other arrests by Federal law enforcement officers.

While the numbers of protestors has dwindled, it does not alleviate the potential for escalating protest tactics. The point of any protest is to exercise a constitutional right and at the same time attract attention to the cause. If the sheer numbers do not demand notice, experience has shown us that escalating tactics may be used to garner attention.

The District has a continuing obligation to provide for the overall health and welfare of its residents and visitors to the city. Several District of Columbia agencies are working to ensure the wellbeing of the protestors and to assess and mitigate the impact of their presence on the community. Although there have not been any public health emergencies such as outbreaks of communicable diseases

or reports of food borne illnesses, we will remain vigilant in monitoring and protecting the health and safety of the demonstrators.

The Department of Health has led an effort to address many of the issues. I just need to point out certain areas on which we are concentrating. Hypothermia remains a serious condition. Rodent harborage and abatement is a major factor. Food safety, prescription medications and physical health screenings are something we are encouraging the participants to participate in. We also need to be cognizant of emergency evacuation plans. When makeshift utensils and heating apparatuses are used, there is the potential for harm and danger.

With this, Mr. Chairman, I conclude my testimony and look forward to answering any questions the committee may have.

[The prepared statement of Mr. Quander follows:]

Good afternoon, Chairman Gowdy and members of the Committee on Oversight and Government Reform. Thank you for the opportunity to present testimony and observations on issues surrounding Occupy DC encampments located at Freedom Plaza and McPherson Square. My name is Paul A. Quander, Jr. I serve as the Deputy Mayor for Public Safety and Justice in the District of Columbia, and I am joined today with Chief Cathy Lanier of the Metropolitan Police Department (MPD), the primary police force in the nation's capital; and Dr. Mohammed Ahkter, Director of the District of Columbia Department of Health (DOH).

On October 6, 2011, the National Park Service granted permission to and allowed two very distinct Occupy DC groups to establish sites upon federal property for the purpose of protesting a variety of issues. These sites and demonstrations were and continue to be located at Freedom Plaza, 14<sup>th</sup> and Pennsylvania Ave., NW, three blocks southeast of the White House, and McPherson Square, two blocks northwest of the White House at 15<sup>th</sup> and K Streets N.W. During the first week of the Occupy Movement, there were approximately 150 protestors at Freedom Plaza, and 250 at McPherson Square. Since Thanksgiving the number of occupants has fluctuated with the Freedom Plaza group numbering approximately 30 to 40 participants, and the McPherson contingent numbering about 25 to 50 participants. Initially, a significant number of Metropolitan Police officers were deployed to address Occupy DC, including both MPD's Special Operations Division (SOD) as well as its Civil Disturbance Units, which is staffed by patrol members. After the first week, however, MPD was able to decrease the resources used for Occupy DC, except for major movements or incidents. In the ensuing weeks of the encampments, there were approximately four occasions which required the Metropolitan Police Department to detail more than one or two officers per patrol district per shift from the Civil Disturbance

Units. These events included the Americans for Prosperity meeting at the Convention Center on November 4<sup>th</sup>, the March on the Key Bridge on November 17<sup>th</sup>, the K Street Protests on December 7<sup>th</sup>, and the Occupy Congress March last week on January 17<sup>th</sup>. The MPD staffing for these incidents has ranged from 80 to 400 officers.

For the most part, protests and the occupants of the encampments have been peaceful. There has been the usual taunting and insulting of police officers which is common. However, on a few occasions, the tactics of the protestors have become very aggressive and dangerous resulting in injuries and situations where law abiding citizens were unable to exit buildings or travel on our public roadways. For instance, blocking entrances and exits to buildings – and using children as tools to do so – as well as physically challenging attendees of events espousing opposing political views are unacceptable tactics, and potentially harmful. Blocking traffic and jumping in front of vehicles is especially dangerous. Furthermore, there have been incidents of destruction of property. But most worrisome has been the incidents of violence at McPherson Square such as the attacks on a Park Police officer and later an occupant of the encampment, both of which resulted in hospitalization. And most recently, we had the neglect of a 13 month old barely clothed infant who was left unattended by her father in a tent in 40 degrees weather. This cannot be tolerated.

As of January 19<sup>th</sup>, MPD has arrested 68 individuals affiliated with the Occupy protests. An additional 13 protestors were arrested by another District police force on the grounds of Franklin school. There have been other arrests by federal law enforcement officers. While the number of protesters has dwindled this winter, this does not alleviate the potential of escalating protest tactics. The point of any protest is to exercise a constitutional right and at the same time attract

attention to the cause; if the sheer numbers do not demand notice experience has shown that escalated tactics may be used to garner attention.

The District of Columbia has a continuing obligation to provide for the overall health and welfare of its residents and visitors to the City. Several District of Columbia government agencies are working to ensure the wellbeing of the protesters and to assess and mitigate the impact of their presence on the community. Although there have not been any public health emergencies such as outbreaks of communicable disease or reported food borne illnesses, we will remain vigilant in monitoring and protecting the health and safety of the demonstrators, as well as our residents.

District of Columbia government representatives began visiting the Occupy camps in October 2011. Recently, representatives from the U.S. Park Service have accompanied us in order to collectively assess the living conditions and identify health risks factors. During these visits, we became acutely aware that in addition to other risk factors, mental illness, substance abuse, homelessness and rodent infestation all entered into the public health equation. In addition, we are aware that as the weather becomes severe, the environmental conditions at the sites will only worsen.

In January 2012, the Department of Health (DOH) began convening relevant District government agencies to discuss ongoing activities associated with the Occupy sites. The following agencies are represented: the Department of Public Works (DPW), the Department of Human Services (DHS), the Department of Mental Health (DMH), and Fire and Emergency Medical Services (FEMS). Within DOH, staff from the Addiction Prevention and Recovery Administration, Emergency Preparedness Administration, Rodent Control Program and Food Safety Program attend these meetings.

Reducing health risks and creating and maintaining a healthy environment is a shared priority. I will briefly summarize the current major concerns that the District has and that we have communicated to the Director of the National Park Service.

### **Hypothermia**

Hypothermia is a very serious threat to the Occupy demonstrators and inhabitants of the encampment. In 2010 there were 11 deaths from hypothermia in Washington, D.C. There is concern that as the weather continues to get colder, deaths from hypothermia could occur. Therefore, the Department of Health has issued a Hypothermia Alert to the inhabitants of both sites outlining the signs and symptoms of hypothermia and encouraging them to call 911 in case of an emergency. This health advisory also serves to educate the protestors on safe measures to be taken during extreme weather conditions.

In addition the District of Columbia Department of Human Services has been conducting frequent visits to both sites to assess the hypothermia risk and provide education on hypothermia prevention, including use of the D.C. Hypothermia Hotline. The hotline provides a link to city services and distributes blankets and other comfort items.

### **Rodent Harborage and Abatement**

Rodents spread disease. The infestation of rodents at McPherson Square is clearly visible, even during daylight hours. Rodent burrows have been noted throughout the park and rodents have been observed inside camping tents as well as within the makeshift kitchen tent. Pallets and straw used to elevate tents in an effort to reduce cold further exacerbate the problem by creating prime conditions for rodent harborage.

Effective abatement would necessitate the movement of tents and other supporting material from the encampment while the abatement takes place. Once complete, it is important to educate protestors in order to ensure that an environment conducive to rodent infestation is not re-created. The Department of Health is in discussions with the National Park Service regarding rodent abatement at both sites.

### **Food Safety**

There is an immediate need to implement appropriate environmental safeguards for food preparation and the disposal of waste. DOH has issued a health advisory to educate inhabitants of the camps on proper food handling and preventing food borne illness. Our food inspectors also are working with the food handlers at the camps to educate them about proper food safety.

Of particular concern is the dumping of food and human waste into public storm drains. The storm drains have been properly cleaned by the DC Department of Public Works. The illegal dumping must be immediately halted in order to prevent a negative environmental impact to our waterways and flooding from blocked storm drains.

### **Prescriptions and Other Medications**

Some of the demonstrators who have been on site for several weeks have run out of their prescription medicines. Lack of medications could pose a serious threat to life and health of these individuals. These prescription medications are not available in their makeshift first aid stations. We are working to assess the extent of this situation prior to making an appropriate response.

### **Physical Health Screenings**

Due to several weeks of living in sub-optimal conditions and co-habitation with the homeless population, demonstrators are at increased risk of nutritional deficiencies and infectious diseases. DOH strongly encourages each of the participants in the encampments to receive a physical health screening for communicable disease and other medical conditions so that issues can be identified and treated before becoming a threat to themselves and to the community. Toward this end, DOH is in the process of working with our private healthcare providers to make arrangements for relevant services.

#### **Emergency Evacuation Plan**

In case of a serious emergency such as fire or heavy snowstorm, we need to plan for emergency evacuation of the encampments. The DC Department of Human Services has arrangements to take care of the homeless population, but does not have the capacity to accommodate additional people. An alternative indoor site must be identified and an evacuation action plan made ready. We encourage the National Park Service to work with us to accomplish this.

Addressing these concerns and implementing these recommendations will require funding. As an example of costs, the ambulance services associated with Occupy DC have so far cost \$63,000. Expenses associated with Occupy DC will surely rise as the temperature continues to fall.

The District has expended more than its share of resources in ensuring that not only the occupants of the encampments are safe and cared for but that our residents and visitors continue to receive a high level of services. The District has deployed manpower by way of its police force, fire and emergency medical services and human services agencies such as Department of Health, the Department of Human Services, and the Department of Mental Health. The cost to

the District exceeds the previously requested reimbursement of \$1.6 million dollars. And as we continue to handle the ongoing protest and encampments, the culminative impact upon the City is increasing.

We do not want the public to misunderstand our sentiments; we respect and support the constitutional rights of such activities like spontaneous marches and demonstrations in front of or in proximity to government or private buildings. We have longed realized and accept that as the nation's capital, the District of Columbia is the premier venue for demonstrations. Regardless of the content of the demonstrations, the District has an obligation to safeguard and protect not only those who come to demonstrate, but also all the residents, businesses, and visitors of the District of Columbia. We are a city that is fortunate to have not only a well-trained, disciplined and prepared police force who is equipped to handle any situation but a highly professional and caring staff of social service providers.

In closing, Mayor Gray and the District supports the Occupy DC movements' right to peaceably assemble, and we remain committed to safeguarding both the rights of the protestors and the public health and safety of all in the District. However, we must also protect and promote the interests of District residents, including being a watchdog for the limited resources of the government.

We appreciate the opportunity to discuss this issue and I and my team look forward to responding to any questions the Committee may have.

Mr. GOWDY. Thank you, Mr. Quander.

I have been informed, but I want to verify, the District of Columbia representatives will have one opening statement?

Mr. QUANDER. One opening statement and Chief Lanier, Dr. Akhter and I will be available to answer and respond to any questions you may have.

Mr. GOWDY. I did not want to skip over anyone.

I will now go to Professor Zick.

#### STATEMENT OF TIMOTHY ZICK

Mr. ZICK. Thank you, Mr. Chairman.

Although we are focused here on a particular public place, I think this is an important national issue. There have been Occupy movements, as you know, across the country. This is a protest that is unique, a demonstration that is unique in its methods and it raises some of the same resource concerns that sit-ins, parades and marches do, but it is different in an important respect. That is this.

The movement seeks permanence of place, it seeks to occupy or commandeer a place as part of its First Amendment message. I think it is important to keep that in mind as you consider the First Amendment implications of possibly evicting them from this place. It is not simply, as Chairman Issa said, an opportunity to be heard; it is also an opportunity to be seen. Both of those things are protected under the First Amendment.

The place that is being occupied and demonstrated in, in this particular incidence, is a special place. It is a public forum which under First Amendment doctrine means that, as the Supreme Court has said, time out of mind, people have gathered there for assembly, speech and petition to discuss matters of public concern. In particular, in the District of Columbia, given the site of government, these places have been treated by the D.C. Circuit and other courts as special forums or as a locus for protest activity.

That said, and as some committee members have already suggested, protest rights in public places are not absolute. That is true. The agency that is charged with managing this property has two main responsibilities. The first, I think it has discharged quite well, particularly in light of its history in the courts, I can speak to that in questions rather than in my statement, is to make sure that First Amendment rights are fully preserved and robustly protected.

It has done that in this particular case through a process of negotiated management rather than forceful eviction. In my mind, that is a plausible choice to make and a worthy one. I am in the odd position here of actually defending an agency for potentially overprotecting speech. It is a rather odd position for me because normally I am critical of the government for restricting First Amendment rights in public places.

In terms of that particular trusteeship obligation to protect the rights of people to assemble, petition and speak in public places, the agency, as I said, has discharged its responsibilities and obligations quite well. I know the committee though is concerned about the balance of those particular fundamental liberties with the interest of the public in safety, health and order and those sorts of concerns.

I can say, having looked at the regulations, the agency is in compliance with most of them. I cannot speak in particular to the camping one because that depends on facts on the ground and a totality of circumstances determination by the agency. No permit is required for a demonstration of this size; there are no explicit time limits in the regulations on protests. Some structures are permitted and some, as I understand it, have been removed upon action of the agency and local officials. In large part, the agency has been in compliance with its own regulations.

I understand the concern that the agency not be permitted to prefer some speakers over the others. I want to be clear about what that obligation is under the First Amendment. It is not inappropriate necessarily to prefer fundamental liberties to other uses of the property. What would be inappropriate is to prefer some speakers over others based upon their viewpoint or the content of their message.

I am not aware of any instance in which the agency has not permitted a group to occupy a place in this fashion, to demonstrate in this way, but permitted this particular demonstration to go forward. It is not clear to me the agency has done anything in violation of that principle of content neutrality. In my view, it can prefer that use to other uses of the public property.

There are concerns, I think, about allowing people to occupy and demonstrate in this fashion and what that will do to public parks. The chairman raised that particular issue. I would say allowing this activity to take place and this demonstration to occur does not mean you cannot enforce reasonable time, place and manner regulations, including on the time and location of public demonstrations. Again, in McPherson Square, the regulations permit an assembly of this sort, a demonstration of this sort.

I would be happy to answer your questions.

Thank you.

[The prepared statement of Mr. Zick follows:]

Statement by Timothy Zick  
Cabell Research Professor of Law  
The College of William and Mary, Marshall-Wythe School of Law  
Before the  
House Committee on Oversight and Government Reform,  
Subcommittee on Health Care, District of Columbia, Census, and the National Archives  
McPherson Square: Who Made The Decision to Allow Indefinite Camping In The Park?  
January 24, 2012

Introduction

Mr. Chairman, thank you for the invitation to testify regarding the “Occupy DC” demonstration in McPherson Square here in the District of Columbia. Although the Committee is now focusing on events in McPherson Square, it is actually addressing issues that broadly implicate principles of free speech and governmental proprietorship of public parks. In many respects, the D.C. national parks are critically important public resources. In addition to serving the needs of local residents and tourists, such places are deeply inscribed with national political and cultural memories. Almost since their inception, they have been sites of social and political contest and have served as focal points for social movements of all types. Most critically, these places have served as public forums in which citizens have exercised fundamental First Amendment rights of freedom of speech, assembly, and petition.

The National Park Service (NPS) has important responsibilities with regard to these places. As a trustee of parks and other special public forum properties, NPS must ensure that First Amendment rights are fully preserved. As a manager or proprietor of these public places, NPS must protect the interests of the public at large in terms of health, safety, and general welfare. Typically, NPS can discharge these various duties without conflict. Most speech activity in public places is transitory; demonstrators leave shortly after conveying their message. The “Occupy \_\_\_\_” demonstrations, which have taken place across the nation, defy that model of public assembly and expression. The point of these demonstrations is to remain in place. Occupy protests like those taking place in the District of Columbia have forced officials, courts, and members of the public to consider the appropriate limits of public assembly, protest, and petition in public places.

I appear before you today primarily to provide a constitutional and legal framework for your important oversight function. In terms of the First Amendment, the context is somewhat unusual. Here the agency is not being charged with impinging on or limiting the First Amendment liberties of demonstrators. Rather, agency officials have come under criticism for perhaps being too permissive with regard to the exercise of expressive liberties in a public park. In my view, NPS has been appropriately mindful of its obligation not to interfere with the exercise of speech and other First Amendment liberties in McPherson Square. I recognize, however, that some may question the manner in which the agency has discharged some of its managerial duties with regard to McPherson Square. To the extent possible, my testimony also addresses NPS’s enforcement of its regulations.

The Concept of the “Public Forum”

McPherson Square is not an ordinary public property. Among the vast array of governmental properties, public parks are unique in terms of their relationship to First Amendment rights and values. Unlike other public places, including this Committee room, public parks have a special constitutional status. Under First Amendment free speech doctrine, they are considered traditional or quintessential “public forums.” This special legal and constitutional status imposes certain limits on governmental regulation of speech, assembly, and petition activities in such places.

The concept of the “public forum” has played a critical role in terms of the exercise of First Amendment rights in the United States. Under First Amendment doctrine, public parks were initially treated as belonging to the government and resting exclusively within its control. However, the Supreme Court eventually recognized that such places “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”<sup>1</sup> As the Supreme Court has recently and repeatedly emphasized, the government “does not have a free hand to regulate private speech on government property.”<sup>2</sup> Indeed, the Court has acknowledged that “members of the public have strong free speech rights when they venture into public streets and parks.”<sup>3</sup>

Throughout our history, exercise of these rights has been critical to proselytizers, petition-gatherers, and political movements. This has been especially true of parks such as McPherson Square, which are located in the nation’s capital and near the seat of government. The National Mall, Lafayette Square, and the Lincoln Memorial have all been sites in which national moments and public memories have been deeply inscribed.<sup>4</sup> As the D.C. Circuit recognized, local parks in the District “constitute a unique situs for the exercise of First Amendment rights.”<sup>5</sup> Thus, it is especially important that rights to speak, protest, and petition remain as broad and robust as possible in these places.

Of course, First Amendment rights in public places are not absolute. In traditional public forums such as public parks, the courts have held that government cannot restrict or prohibit expressive activities such as demonstrations because they disagree with the message being conveyed, dislike the group conveying the message, or object to the demonstration on aesthetic grounds. Nor can they favor some groups over others in terms of granting permits or other forms of access to public forum properties. Although government may adopt flexible interpretations of rules and regulations concerning public demonstrations and protests, it must at all times remain neutral with regard to the message, idea, or philosophy being conveyed in a public forum.

<sup>1</sup> *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939) (opinion of Roberts, J.).

<sup>2</sup> *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009).

<sup>3</sup> *Id.*

<sup>4</sup> See Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places*, Ch. 6 (Cambridge Univ. Press 2009).

<sup>5</sup> *A Quaker Action Group v. Morton*, 516 F.2d 717, 725 (D.C. Cir. 1975).

Under established First Amendment doctrine, so long as it applies objective criteria, government may generally require that speakers obtain a permit before engaging in expressive activity in public parks. Government may also impose content-neutral time, place, and manner regulations on expressive activities in traditional public forums. The government has broad authority to regulate public demonstrations in furtherance of public order, safety, and aesthetics. So-called “time, place, and manner” regulations must be justified without reference to the content of the regulated speech, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication.<sup>6</sup>

Under this standard, courts have held that government can generally regulate the times during which demonstrations may take place, the location of protests, the routes of marches and parades, noise levels, posting of signs, use of structures, and other matters unrelated to the content of expression. NPS regulations address these and other requirements in detail, as they relate to demonstrations in McPherson Square and other public parks under the agency’s jurisdiction. *See generally* 36 C.F.R. § 7.96.

#### NPS’s Role as Trustee of a Public Forum

In places like McPherson Square, First Amendment rights have by long tradition been robustly exercised and protected. As a trustee of public forum properties, NPS is charged with ensuring that robust speech, assembly, and petition rights enjoyed in such places are fully protected. It is also charged with preserving and maintaining the public forum for the benefit of the public at large.

#### *Preserving First Amendment Liberties*

Public forum properties such as McPherson Square are treated as special in part owing to their role in facilitating self-government and democracy. As the D.C. Circuit has recognized, “The use of parks for public assembly and airing of opinions is historic in our democratic society, and one of its cardinal values.”<sup>7</sup> In public parks, speakers are able to communicate messages to the public at large on matters of public concern. When they do so, the Supreme Court has held that their activities are entitled to “special protection.”<sup>8</sup> As the Court has emphasized in discussing expression in public forums, “Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such a diminution of the exercise of rights so vital to the maintenance of democratic institutions.”<sup>9</sup>

NPS appears to have carried out its trusteeship duties in McPherson Square mindful of its obligations to protect demonstrators’ strong rights to assemble, speak, and petition government for redress of grievances. By adopting a policy of negotiated management rather than one of forceful eviction, the agency has ensured that a public place that “time out of mind” has served as a site for

<sup>6</sup> *Perry Educ. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 45-46 (1983).

<sup>7</sup> *A Quaker Action Group*, 516 F.2d at 724.

<sup>8</sup> *Snyder v. Phelps*, 131 S. Ct. 1207, 1219 (2010).

<sup>9</sup> *Schneider v. State*, 308 U.S. 147, 161 (1939).

assembly and discussion of issues of public concern continues to serve that fundamental democratic function.<sup>10</sup> In this respect, its regulatory decisions thus far have been consistent with the concept of the public forum under First Amendment doctrine.

*NPS's Role as Property Manager*

As noted earlier, First Amendment rights in public forums are not absolute. Public parks facilitate other functions and uses. McPherson Square is held in trust not only for demonstrators, but for the benefit of the public as a whole. As trustee and property manager, NPS must balance expressive uses with preservation and maintenance of McPherson Square for the benefit of the public at large. As discussed above, in undertaking that balance the agency must recognize the special constitutional significance of public forum properties.

This Committee is obviously not bound by principles of judicial review of agency action. However, in the interest of providing legal background for the Committee's oversight function, I would note that courts have typically deferred to agency decisions regarding preservation and maintenance of public forum properties. In *Clark v. Community for Creative Non-Violence*, in which the Supreme Court upheld NPS's prohibition of overnight camping on the National Mall and in Lafayette Square Park, the Court stated that its precedents do not "assign to the judiciary the authority to replace the Park Service as the manager of the Nation's parks or endow the judiciary with the competence to judge how much protection of park lands is wise and how that level of conservation is to be attained."<sup>11</sup> As a manager or proprietor of public parks, NPS is ordinarily entitled to substantial judicial deference when applying and enforcing regulations regarding demonstrations in public parks under its control. Among other things, as *CCNV* shows, this deference would extend to matters such as preservation of the lawn areas of McPherson Square and allocation of the scarce resource of park properties.<sup>12</sup>

With regard to the regulations applicable to the Occupy DC demonstration in McPherson Square, assuming that fewer than 500 protesters have been involved in the demonstration, NPS has properly determined that its regulations do not require that a permit be obtained. 36 C.F.R. §7.96(g)(2)(ii)(B). While its regulations do impose time limits for permitted demonstrations and events in certain locations, NPS has also correctly determined that the regulations do not impose any time limit on demonstrations in McPherson Square. Indeed, reviewing an earlier iteration of NPS regulations regarding public demonstrations, the D.C. Circuit invalidated a requirement that permitted demonstrations be limited to no more than seven consecutive days.<sup>13</sup> The court determined that where the duration of a demonstration might raise conflicts with other applications, the regulations could condition the grant of the permit on an appropriate time limit. The court also

<sup>10</sup> *Hague*, 307 U.S. at 515.

<sup>11</sup> 468 U.S. 288, 296 (1984).

<sup>12</sup> Under administrative law principles, the agency would also be granted significant discretion to determine whether its regulations have been violated and how best to enforce them in the public interest. Moreover, it is well established that an agency's interpretation and application of its own regulations is entitled to deference. *Auer v. Robbins*, 519 U.S. 452, 461 (1997).

<sup>13</sup> *A Quaker Action Group*, 516 F.2d at 734.

stated that “[g]overnment regulations could provide that any permit for a period beyond a specified limit is subject to displacement if others seek a permit that precludes double occupancy.”<sup>14</sup> As noted, current NPS regulations do not currently place any time limits on demonstrations in McPherson Square, whether pursuant to a permit or without need for one.

NPS regulations require that demonstrations held without a permit must be “reasonably consistent with the protection and use of the indicated park areas and other requirements of this section.” *Id.*, §7.96(g)(2)(ii). Again, if it were challenged in court, NPS’s determination regarding whether the Occupy DC demonstration in McPherson Square is “reasonably consistent with the protection and use of the indicated park” would ordinarily lie within the agency’s discretion. NPS regulations prohibit the erection of certain structures. *Id.*, §7.96(g)(2)(vi). Although agency personnel and others are in the best position to testify on this matter, my understanding, based on the agency’s recent response to a Committee inquiry, is that the regulations regarding structures have been enforced by NPS and local law enforcement officials on certain occasions during the demonstration in McPherson Square.

Although NPS regulations do not impose any explicit time limits on the Occupy DC demonstration in McPherson Square, they do expressly prohibit “camping” except in designated areas. *Id.*, § 7.96(i). McPherson Square is not a designated camping area. Under NPS regulations, temporary structures may not be used outside designated camping areas “for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities.” 36 C.F.R. §7.96(g)(2)(vi). According to the regulations, these activities “constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.” *Id.*

Although the Supreme Court’s decision in *CCNV* upheld the ban on camping in certain public parks in the capital, the decision acknowledged that NPS regulations nevertheless permitted a “day-and-night vigil.”<sup>15</sup> Indeed, the Court specifically relied on this fact in analyzing the burden the camping ban imposed on expressive activity in Lafayette Square Park and on the National Mall. Current NPS regulations do not prohibit round-the-clock vigils in McPherson Square. According to NPS, such vigils have taken place in some D.C. parks that are not designated as camping areas. Further, in *CCNV* the Court noted that despite the camping ban, the tents and other structures used as part of the homelessness demonstration at issue in that case were permitted to remain standing. Again, current NPS regulations permit tents and other temporary structures to be used in

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<sup>14</sup> *Id.*

<sup>15</sup> *CCNV*, 468 U.S. at 295.

McPherson Square, so long as they are not being used “for living accommodation activities.” *Id.*, § 7.96(g)(2)(vi)(C).<sup>16</sup>

Whether the camping prohibition has been or is currently being violated ultimately depends on the agency’s determination whether it “reasonably appears, in light of all the circumstances,” that Occupy DC demonstrators are using McPherson Square as a “living accommodation.” In making that determination, agency personnel would have to assess, among other things, the purpose for which any bedding on the site has been used, whether personal belongings have been stored there, and whether the circumstances as a whole indicate that the demonstrators are engaged in camping activity. Agency and law enforcement personnel are in the best position to testify regarding what they have observed in terms of the use of tents and other structures at the park.

#### Conclusion

As the trustee of public parks such as McPherson Square, NPS has the responsibility to ensure that public demonstrations and events are permitted and that fundamental rights of speech, assembly, and petition are protected. As the federal agency charged with preservation and maintenance of McPherson Square, NPS also has the responsibility to ensure that these activities do not unduly harm the property, the surrounding community, or pose a danger to the participants themselves. NPS has discharged its important constitutional obligations to preserve robust expressive liberties in McPherson Square, an important and unique public forum. Owing largely to its reliance on continued presence as a form of public expression, the long-term Occupy DC demonstration in McPherson Square has presented unique public health, safety, and scarcity concerns. In balancing these concerns with the need to preserve fundamental First Amendment rights in a public forum, NPS has complied with its permitting regulations. Further, NPS has properly determined that there is no explicit time limit in its regulations regarding demonstrations in McPherson Square, and the agency appears to have enforced regulations prohibiting the use of certain temporary structures. Whether the Occupy DC demonstrators in McPherson Square have complied with the NPS ban on camping in the park depends upon whether it reasonably appears that camping is taking place, based upon the agency’s consideration of the totality of circumstances.

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<sup>16</sup> Moreover, the Regional Director may also impose “reasonable restrictions upon the use of tents and other temporary structures “in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns.” *Id.*, § 7.96(g)(2)(vi)(C).

Mr. GOWDY. Thank you, Professor Zick.  
Mr. Jarvis.

#### STATEMENT OF JONATHAN JARVIS

Mr. JARVIS. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to discuss the National Park Service's handling of the Occupy D.C. demonstrations at McPherson Square.

This hearing takes place in the District of Columbia, the Capital of our Nation and the seat of our Federal Government. It is here, perhaps more than any other place in the United States, that Americans come to exercise their First Amendment rights to peacefully assemble, to petition their government for redress of grievances and to exercise their right of freedom of speech. All 397 of America's national parks, but especially the national parks in Washington, DC, are places where citizens' rights are guaranteed under our Nation's Constitution.

Among law enforcement agencies in the Nation, the National Park Service and its urban law enforcement organization, the U.S. Park Police, have perhaps the greatest experience handling First Amendment activity. In 2011 alone, there were 626 permitted First Amendment activities on MPS lands in Washington, DC. Not all First Amendment activities require a permit. Therefore, these numbers are only a portion of those taking place in our capital city.

A few examples of the historic large scale, First Amendment demonstrations here on MPS lands include the annual Right to Life march, the Million Man march, Promise Keepers, and the World Bank International Monetary Fund protests. Some of these events have changed our Nation such as when Dr. Martin Luther King, Jr.'s civil rights march took place on the National Mall.

Though many of these First Amendment demonstrations are short term, some are longer term vigils. In 1979, 6,000 family farmers drove their tractors to Washington, DC, to protest American farm policy. They were on the Mall for 7 weeks. A month after Dr. King's assassination, thousands of demonstrators set up a shantytown known as Resurrection City for a month-long vigil here in Washington. In 1985, Vietnam veterans' vigil groups began to demonstrate on behalf of servicemen and servicewomen. Rolling Thunder continues that 24-hour vigil to this day.

The success of the National Park Service and the U.S. Park Police in managing these demonstrations is directly attributed to our reason and measured and progressive response. The MPS and the U.S. Park Police handling of First Amendment activities begins at the lowest level of enforcement and then increases if the situation warrants. This strategy insures the health and safety of the demonstrators as well as D.C. residents and visitors.

Courts have recognized that this kind of reasoned and measured technique of law enforcement helps minimize the potential for disorder. The courts have also afforded the NPS a great deal of discretion to enforce rules and regulations in the manner that best fits the situation.

In the case of the McPherson Square demonstrations, NPS personnel concluded that the activities in the Square were protected by the First Amendment and that there were less than 500 dem-

onstrators therefore, in accordance with our regulations, no permit is required. NPS regulations do not allow for camping within McPherson Square. However, temporary structures including tents are permissible as part of a demonstration and a 24-hour, round-the-clock vigil is also allowed.

From the outset, NPS has been working with the District of Columbia including the Metropolitan Police Department, the Departments of Health, Fire and EMS, to ensure that the demonstrations at McPherson are conducted in a safe and lawful manner. Just this week, we conducted a joint health inspection with the D.C. Department of Health. U.S. Park Police have at all times maintained a law enforcement presence and patrols at McPherson Square in order to protect health and safety of park visitors and the demonstrators and have taken enforcement action when necessary.

The NPS has employed a reasoned, measured and incremental approach to address regulatory violations that minimize the threats to public safety while protecting First Amendment activities. This process has involved an evolution from outreach and education to formal notices of the rules that govern use of McPherson Square.

I want to be clear that we take seriously District residents' concerns and are constantly monitoring and evaluating conditions in the Square. I understand this demonstration has impacted some District of Columbia businesses and visitors alike and I appreciate their efforts to tolerate this activity.

It is important to note that absent an emergency or threat to public or health and safety, demonstrators at McPherson Square must be allowed to continue their vigil in accordance with existing regulations and well established judicial interpretations of their First Amendment rights. As long as the demonstration continues, however, the NPS will take an enforcement approach that seeks to protect the health and safety of all respecting their First Amendment rights.

This concludes my statement and I am open to questions.  
[The prepared statement of Mr. Jarvis follows:]

**STATEMENT OF JONATHAN B. JARVIS, DIRECTOR, NATIONAL PARK SERVICE,  
DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON HEALTH  
CARE, DISTRICT OF COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES OF  
THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
CONCERNING ISSUES SURROUNDING THE NATIONAL PARK SERVICE'S (NPS)  
HANDLING OF DEMONSTRATIONS AT MCPHERSON SQUARE.**

**January 24, 2012**

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Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the National Park Service's (NPS) handling of the Occupy DC demonstrations at McPherson Square.

This hearing takes place in the District of Columbia—the capital of our nation and the seat of our federal government. The city itself serves as a symbol of the ideals upon which this country was founded: a nation of laws in which every citizen's basic rights are protected. It is here, perhaps more than any other place in the United States, that Americans come to exercise their First Amendment rights to peaceably assemble, to petition their government for redress of grievances, and to exercise their right of freedom of speech.

All 397 of America's national parks— but especially the national parks in Washington, DC—are proud of their tradition as places where our citizens come for reflection, commemoration, recreation, and to make their voices heard through public assembly and political demonstration. These are places where their rights are guaranteed under our nation's commitment to freedom of speech under our Constitution.

Among law enforcement agencies in the nation, the NPS and its urban law enforcement organization, the United States Park Police (USPP), have perhaps the greatest experience handling First Amendment activities. In Washington, DC, in particular, freedom-of-speech activities on national park lands are handled by NPS regional and park personnel and the USPP. These NPS personnel are highly experienced in dealing successfully and effectively with First Amendment demonstrations in our nation's capital.

In 2010, there were 724 permitted First Amendment activities and in 2011 there were 626 permitted First Amendment activities on the National Mall. But such permitted activities are only a portion of the total First Amendment activities taking place on lands administered by the NPS here in our capital city. Consistent with NPS regulations that have developed over the years, permits are not required for groups of fewer than 25 people in most locations, while a larger threshold number exists in some locations, such as McPherson Square.

A few examples of large-scale First Amendment demonstrations that have been successfully managed by the NPS include the annual Right to Life March, ANSWER demonstrations, KKK demonstrations, Immigration Rallies, and the Million Man March, as well as demonstrations for the Promise Keepers, One Nation Working Together, and the World Bank/IMF protests. Dr.

Martin Luther King Jr.'s non-violent movement and his civil rights march in Washington, DC, including his "I Have a Dream" speech, also took place on the National Mall.

The NPS and the USPP field personnel also have experience in handling high profile and long-term vigils. One example is the 1979 Farmers Vigil, when 6,000 family farmers drove their tractors to Washington, DC, to demonstrate against American farm policy. For seven weeks, the National Mall became the base of operations of these farmers' lobbying and demonstration efforts.

Another occurred in 1968. At the time, the Poor People's Campaign, organized by Dr. Martin Luther King, Jr. and the Southern Christian Leadership Conference, addressed the issues of economic justice and housing for the poor in this country. A month after Dr. King's assassination on April 4, 1968, movement leaders decided to continue the campaign in his honor. Demonstrators began a month-long vigil in our nation's capital and thousands of participants came into what became known as Resurrection City.

I note that this past fall, the NPS assumed management responsibility for the Martin Luther King, Jr. Memorial here on the Mall, adding to the city another reminder of the First Amendment rights of American citizens.

Another example of an ongoing demonstration is that of Ms. Concepcion Picciotto, a one-person demonstrator who began her vigil in Lafayette Park in June 1981. Today she is continuing her 30<sup>th</sup> year demonstrating against nuclear proliferation with the display of signs and the distribution of literature. Another current vigil is occurring at the Lincoln Memorial. In 1985, the Vietnam Veterans Vigil Groups, with approximately 20 groups, began a vigil in order to demonstrate on behalf of servicemen and women who were missing in action and/or suffering with illnesses as a result of exposure to Agent Orange. After the 2009 rehabilitation of the Lincoln Memorial Plaza area, most groups have left; however, Rolling Thunder continues the 24-hour vigil to this day.

The success of NPS and USPP efforts in handling these events that have a place in our nation's history and in the personal history of so many of its citizens is directly attributable to their measured approach in the planning and implementation of their response to these demonstrations.

The NPS's and USPP's handling of First Amendment activity begins with the lowest level of enforcement in order to allow demonstrators the opportunity to express their views; enforcement then increases if the situation warrants. This strategy allows our officers to work with demonstrators—if the demonstrators are cooperative—to ensure the health and safety of the demonstrators as well as DC residents and visitors. This means that our officers respect the demonstrators' First Amendment rights, but also enforce quality of life regulations. Courts have recognized that this kind of measured, preventive technique of law enforcement helps minimize the potential for disorder.

As this is a nation of laws, so too is the NPS's handling of First Amendment activities, including those in McPherson Square. I am not a lawyer and rarely do I speak in terms of court decisions.

But when the NPS deals with First Amendment issues, we must do so on the basis of how the courts over the years have interpreted and applied one of America's most cherished freedoms. That courts have repeatedly recognized the right of citizens to use public parks for expression is of special importance in the District of Columbia, where demonstrators' activities implicate not only the First Amendment rights of freedom of speech and peaceable assembly but also the First Amendment right to petition the government for redress of grievances.

However, the courts have also recognized that the NPS has certain discretion to enforce rules and regulations in the manner that best fits the situation, including using our authority to place reasonable time, place, or manner restrictions on that freedom of expression, as long as the restrictions are content neutral, are narrowly tailored to serve a significant government interest, and leave open, ample, alternative channels for communication of information. The NPS's rules and regulations have been the subject of much litigation over the years and our present regulations have been carefully crafted to conform to First Amendment jurisprudence as well as NPS recognition of the importance of First Amendment activities.

In the case of the McPherson Square demonstration, the demonstrators did not apply for a permit prior to the start of their demonstration, nor were they required to do so. NPS regulations, which were promulgated in 1983, do not require a permit for the use of McPherson Square if the activity involves fewer than 500 people. NPS regulations do not allow for camping within McPherson Square; however, temporary structures, including tents, are permissible as part of a demonstration to further their symbolic message or to meet logistical needs. Constant, round-the-clock demonstration vigils have been a regular occurrence in some national park areas.

Although NPS officials did not have contact with the McPherson demonstrators prior to the initiation of their demonstration in McPherson Square, NPS personnel concluded, based on observation and communications with demonstrators, that the expressive activities in the square were protected by the First Amendment and that there were fewer than 500 demonstrators. Currently there are demonstrators in McPherson Square who are actively engaged in round-the-clock First Amendment activities based on the observations of USPP.

In order to best meet public safety goals while respecting this First Amendment activity, the NPS has been working with the District of Columbia, including the Metropolitan Police Department, the DC Department of Health, DC Dept. of Mental Health and the DC Fire and EMS, to ensure that demonstrations in McPherson Square are conducted in a safe and lawful manner. Just last week, we conducted a joint health inspection of McPherson Square with the DC Department of Health.

In particular, NPS personnel have at all times maintained a law enforcement presence and patrols at McPherson Square in order to protect the health and safety of park visitors and demonstrators, and the park's resources and have taken enforcement action when necessary. NPS personnel also have maintained an ongoing dialogue with the demonstrators in McPherson Square about the rules, rights, and responsibilities involving a demonstration of this nature.

The NPS has employed a reasoned, measured, and incremental approach to address regulatory violations that minimize the threats to public safety and property while respecting First

Amendment activities. This process has involved an evolution from outreach and education, to formal notices of the rules that govern use of McPherson Square to secure voluntary compliance. Conversations are ongoing, and as conditions warrant, the approach has evolved.

I want to be clear that we take very seriously residents' and the District's concerns and are constantly monitoring and evaluating conditions in the Square. I understand that this demonstration has impacted some District of Columbia residents and visitors alike and I appreciate their efforts to tolerate this freedom of speech activity.

It is important to note that, absent an emergency or threat to public health or safety, demonstrators in McPherson Square and elsewhere in the city are allowed to continue their vigil in accordance with existing regulations and well-established judicial interpretations of their First Amendment rights. As long as the demonstration continues, however, the NPS will take an enforcement approach that seeks to protect public health and safety while respecting First Amendment rights and working within the laws and rules that govern our enforcement activity.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or the other members of the subcommittee may have.

Mr. GOWDY. The Chair will recognize himself for questions at this point.

Mr. Jarvis, one reason that I like law enforcement like Chief Lannier and the other men and women who are in uniform today and everywhere else across the country, is there really are not protestors that are Republican or Democrat in their judgment; there are not laws that are Republican or Democrat; there are not crime victims that are Republican or Democrat. It is just the law.

What I am trying to glean is what is the law because whatever you saw with respect to McPherson Square is going to have to be applicable everywhere else in this country, so the notion that you think Washington may have special First Amendment privileges, it does not. There are no more First Amendment rights in this town than there are in any other city, town, hamlet in this country.

Define camping for me. You say it is prohibited. Tell me what it is.

Mr. JARVIS. Yes, sir, I agree with you that the First Amendment applies everywhere in the United States. It is just in the District of Columbia, we have more experience with it because we have more protests, we have more First Amendment activities in the District than any other place in the country.

The U.S. Park Police and the National Park Service that manage the National Mall handle hundreds of these kinds of events. We take exactly the same approach every time. That is a measured and reasoned response. What is unique about the McPherson Occupy group is that they are disorganized; there is no unit leader we can go to and negotiate our expectations of their compliance.

Mr. GOWDY. Mr. Jarvis, I hate to cut you off. I have 5 minutes. I need a definition of camping because I need to go back to South Carolina and tell everyone who wants to spend the summer in one of our parks what camping is and what it is not. Define camping for me juxtaposed with a 24-hour vigil because you seem inclined to draw a distinction and I cannot draw a distinction. What is the definition of camping?

Mr. JARVIS. The distinction is for a 24-hour vigil they are awake at all times providing information or signs or whatever associated with their First Amendment activities. Camping is defined as sleeping or preparing to sleep at the site.

Mr. GOWDY. Is there sleeping going on in McPherson Square?

Mr. JARVIS. Yes, sir, we do believe there is.

Mr. GOWDY. Is there preparing to sleep or are they all insomniacs?

Mr. JARVIS. I believe that there are some preparing to sleep.

Mr. GOWDY. So you are not drawing a separate, First Amendment rule for insomniacs versus narcoleptics?

Mr. JARVIS. What I am stating is that we do believe that there is some camping going on at McPherson Square associated with their vigil.

Mr. GOWDY. How much investigation have you done into that?

Mr. JARVIS. We are, as I indicated, taking a measured and reasoned approach to this.

Mr. GOWDY. I do not know what that means. I am just an old country prosecutor. Measured and reasoned approach does not mean anything to me. What means something to me is can you de-

fine camping because you strictly prohibit it; you just said it is going on; and that is fine. If you want to change the rules, that is fine. Just let me tell my constituents who want to visit D.C. this summer that they can come to any park they want, bring their tent as long as they say they are protesting. Can I tell them that?

Mr. JARVIS. They can bring their tent, absolutely.

Mr. GOWDY. They can stay. They can sleep?

Mr. JARVIS. No, they cannot.

Mr. GOWDY. Is there sleeping going on in McPherson Square? You said there is. What is the difference?

Mr. JARVIS. What I said, and I will continue to say, is that the protestors, the demonstrators, exercising their First Amendment rights have the rights to be in McPherson Square 24 hours a day. That is nothing new.

Mr. GOWDY. You view them as a unit. As long as one of them is awake, that gives constitutional cover for the rest to sleep. Is that the new analysis?

Mr. JARVIS. No, I do not say that. What I said is that they, as group, have the right to be there on a 24 hour vigil, individuals. The camping regulation is an individual violation, not a group violation.

Mr. GOWDY. How many people have been cited for camping?

Mr. JARVIS. At this point, none.

Mr. GOWDY. You told me people were sleeping.

Mr. JARVIS. We are in the process of gaining compliance with the occupiers through a series of ramping up the enforcement at the site to gain compliance. That is the approach we have used for First Amendment activities in this town for decades and it has been quite successful.

Mr. GOWDY. How long has gaining compliance been going on? When did the movement start in D.C.?

Mr. JARVIS. This particular movement began in October.

Mr. GOWDY. October, November, December, so 90 days, coming up on 100 days, is that right? How long do you think it will take you to gain compliance?

Mr. JARVIS. I hope we can gain complete compliance very soon.

Mr. GOWDY. No citations for sleeping?

Mr. JARVIS. We have issued a lot of other citations but not particularly for camping.

Mr. GOWDY. Is that the lynchpin of the definition of camping, sleeping?

Mr. JARVIS. Sleeping, yes, it is one of the definitions, sleeping or preparing to sleep.

Mr. GOWDY. To prove your ideological neutrality, if the NRA or the Chamber of Commerce, the National Federation of Independent Businesses or anyone associated with the other side wants to come to McPherson Square this afternoon with tents, as long as one person remains vertical, they can stay?

Mr. JARVIS. I am ideological neutral on this. I could care less what their cause is. My job as a 35 year veteran of the National Park Service is to protect the individuals' rights under the First Amendment.

Mr. GOWDY. Wait a second. To protect their rights under the First Amendment, is it not also your job to enforce the law?

Mr. JARVIS. Absolutely, it is my job.

Mr. GOWDY. Is it against the law to camp?

Mr. JARVIS. The courts have afforded us a great deal of discretion in how we enforce the law in order to protect the First Amendment. That is exactly what we are doing.

Mr. GOWDY. Do you agree the Supreme Court has said sleeping and camping can be prohibited?

Mr. JARVIS. Yes, they can, but at the same time, they gave us the discretion in how and when we implement that regulation.

Mr. GOWDY. I am going to be making sure that anyone who wants to camp throughout the United States as long as they say they are in protest of something can do whatever they want in Federal parks.

With that, I would recognize the gentleman from Illinois, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman.

I too want to thank our witnesses for their testimony and for being here.

The courts have traditionally upheld the right of governments to manage and supervise public property as long as there is a rational basis for the rules. No point of view is being discriminated against but the very name Occupy suggests a constant presence and commitment not to move in the face of perceived injustice.

Director Jarvis, let me ask you, due to the length of the vigil, did your office have any special concerns about health and safety?

Mr. JARVIS. Yes, sir. We have been concerned actually the most about health and safety from the very beginning. We have been working with the District of Columbia to put in place both the systems. For instance, the National Park Service increased the trash collection at McPherson to three times a day so that there would not be an accumulation of attraction or distraction at the site.

Mr. DAVIS. Your office did work with the Park Police on an ongoing basis?

Mr. JARVIS. Absolutely, yes, sir.

Mr. DAVIS. How would you characterize the response of the Occupy D.C. protestors to whatever concerns that might have been expressed to them?

Mr. JARVIS. Initially, because there is no one leader there that we could go to and discuss specifically with them our concerns for health and safety, cleanliness at the site and other concerns, and initially they were antagonistic to our presence at the site. That has significantly changed. Through the great work of the U.S. Park Police and our staff within the National Mall, we have developed a rapport at the site, we have gained a great deal of compliance. They notify us when there are concerns particularly with law enforcement, so I believe we have made some great inroads.

Mr. DAVIS. You would say they have basically been cooperative after the initial resistance?

Mr. JARVIS. Yes, sir.

Mr. DAVIS. Are there any benefits to the Occupy D.C. protestors to maintaining vigils in a few locations? Is it best that they be concentrated or have the ability to move from one perhaps location or one spot to another?

Mr. JARVIS. It is an advantage from a law enforcement standpoint that they are concentrated in one area. That allows us to work directly with the Metro PD to provide around the clock law enforcement services at the site rather than being spread across a very large area, as well as the impact to the grass has already happened. Moving to another site would just result in new impacts to one of our other First Amendment sites.

Mr. DAVIS. You mentioned your 35 years of service with the Park Service. Obviously you have seen many permits, many protests, many demonstrations. Have you seen any that have raised the level of concern that Occupy D.C. seems to be raising to the point of a congressional hearing?

Mr. JARVIS. This is the first congressional hearing where I have testified related to a First Amendment activity.

Mr. DAVIS. Thank you very much.

I yield back.

Mr. GOWDY. I thank the gentleman from Illinois.

The Chair would now recognize another gentleman from Illinois, Mr. Walsh.

Mr. WALSH. Thank you, Mr. Chairman. Thank you for hosting this hearing.

Mr. Jarvis, welcome. I apologize if I want to pull us back and get some context.

It is always so dangerous at hearings because we focus on things maybe we should not be focused on. I want to focus on one very specific notion.

There is a statute, I believe, that says camping is illegal. Camping in McPherson Park is against the law, is that correct?

Mr. JARVIS. That is correct.

Mr. WALSH. In fact, I believe the Park Service handed out a document early on in the Occupy D.C. process to the folks at McPherson Park that I found quite helpful, which spelled out the definition of camping that you and I both agree is not allowed. It says "camping is defined as the use of parkland for living accommodation purposes such as sleeping activities or making preparations to sleep including the laying down of bedding for the purpose of sleeping or storing personal belongings or making any fire or using any tents or shelters or other structure vehicle for sleeping or doing any digging or earth breaking."

Mr. Jarvis, based on your own definition of camping, are they camping at McPherson Park?

Mr. JARVIS. We believe that there are individuals there that are doing those activities that would result in us saying they are camping, yes.

Mr. WALSH. Why have they not been removed? Why has your own statute not been enforced?

Mr. JARVIS. Because each of our First Amendment demonstrations are a little bit unique. This one is, let us say, unprecedented in part in that it has been stated that the core of their First Amendment activity is that they occupy the site. As we have approached this, how we are trying to manage this activity, our first goal in the National Park Service in allowing and providing for First Amendment activities is the health and safety of the community and the demonstrators themselves.

We felt that going in right away and enforcing the regulations against camping could potentially incite a reaction on their part that would result in possible injury or property damage.

Mr. WALSH. Mr. Jarvis, I appreciate the candor and the answer. You have acknowledged that they are camping, you have acknowledged that there are individuals in McPherson Park breaking the law. They have been there since October. It is not like 3 or 4 months later now you have been too quick to enforce the law. They have been there 4 months. We are not even yet getting into many of the other issues that the city is having to deal with.

Again, nobody up here, Republican or Democrat, I do not think anybody in this hearing room questions at all their right to protest. That is not what this hearing is about. You are not enforcing your own statute. Who is telling you, I know this is not you, who is telling you not to enforce the statute? It is not your job to determine how to treat protest groups differently. They are breaking the law. Why aren't you enforcing that law? It has been 4 months.

Mr. JARVIS. All of our decisions related to the way this particular protest has been handled has been made on the ground first and foremost by our U.S. Park Police officers and commanders. I served as a law enforcement officer and law enforcement officers are granted a great deal of discretion in terms of how they enforce and what they enforce and when they enforce.

Mr. WALSH. Mr. Jarvis, my time is running out. Are there some political sensitivities at play here that is sort of preventing you all from enforcing the law?

Mr. JARVIS. Absolutely not.

Mr. WALSH. Are you getting any sort of advice or orders from people above you?

Mr. JARVIS. I am regularly briefing the Secretary of Interior as would be expected under any issue that faces the National Park Service, but I am not taking direction on this on how the site should be handled.

Mr. WALSH. Mr. Chairman, I will close with this because I see my time is running out. I had a staff member visit McPherson Park last night just to sort of learn from our own what is going on. Obviously what we found out seconds your opinion that folks are sleeping, they are camping. I appreciate your candor. I do not think this is your decision. I appreciate that the city of Washington, DC, is at a breaking point right now and I am just really curious as to why people above you do not let you enforce the law.

Thank you, Mr. Chairman.

Mr. GOWDY. Thank the gentleman from Illinois.

The Chair will now recognize the ranking member of the full committee, the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. First of all, I want to thank all of you for your testimony.

Mr. Jarvis, I just want to thank you for using your discretion. As a child, starting at 9 years old, I started participating in protests just to get some rights. I realize what a delicate balance it can be when you have people together who are frustrated and who are very, very sensitive and while trying to protect their health and safety, it must become difficult at time to try to figure where that

balance is. Obviously you have done a very good job of dealing with it.

At the same time, I was sitting here listening to the last questioner. Our law enforcement people, our park people and our government folk, who have to carry out these very difficult tasks, it is easy for us to sit up here and second guess the people on the ground like Chief Lanier and others, but the fact is you are the ones who have to deal with this on a day to day basis.

I appreciate your discretion. I appreciate you understanding that something could get out of hand. The implication a moment ago, which I would find very insulting, is that you did your job using the discretion the courts have given you and the implication was somebody is telling you what to do and how to do it. That is not true, is it? In other words, you make your best judgment. Is that true?

Mr. JARVIS. That is correct, sir.

Mr. CUMMINGS. Chairman Issa claims that the NPS has allowed protestors to damage the park significantly and that the NPS took no action until the protestors attempted to build a wooden structure. Is it fair to say that the NPS neglected to do some duty at any time since the Occupy protest began?

Mr. JARVIS. No, sir. I believe we have taken exactly the appropriate approach from the very beginning in terms of attempting to contact and develop an understanding of the expectations and desires and intentions of the occupiers at the site. Again, because they did not have a central leader, most of this work has been done through observation. Since we didn't have someone to hand the fliers that were indicated, we posted them at the site and worked toward gaining their voluntary compliance and expectations at the site from the very beginning.

We told them that permanent structures were not going to be allowed and when they attempted to put up the permanent structure, we did move in and remove it. I want to compliment the U.S. Park Police in the handling of that. If you remember, the press was quite good and we actually even received compliments from the demonstrators in terms of the way that was handled.

Mr. CUMMINGS. What was the significance of the attempt to build a wooden structure? What was the significance of that?

Mr. JARVIS. I am not really sure what their intention was but they had been well informed that we would not allow a permanent structure.

Mr. CUMMINGS. Why would that trigger a response?

Mr. JARVIS. They were going to build something on the site. This is a national park unit and temporary structures are allowed under the First Amendment in support of their protest, but not permanent structures.

Mr. CUMMINGS. There comes a point where discretion ends and then you have to act, is that correct?

Mr. JARVIS. Yes, sir, that is correct.

Mr. CUMMINGS. I would take it that a wooden structure would be a clear signal that you had to do something?

Mr. JARVIS. Yes, sir. It was essentially viewed as an escalation of their occupation at the site, so we felt it was time to step in and remove that.

Mr. CUMMINGS. No matter what group this might have been, whether they were protesting right, left, far right, far left, it would not have made a difference, you would have carried it out that way, is that right?

Mr. JARVIS. Yes, sir, that is absolutely right.

Mr. CUMMINGS. You said this is a kind of unique situation. Have you ever seen anything like this in your 35 years?

Mr. JARVIS. We do have long term vigils on the Mall. As I indicated, the Vietnam War vigil that takes place at the Vietnam Memorial near the Lincoln has been going on since the 1980's. We have had other long term protests such as the farmers' workers that came in who were here for multiple weeks occupying sites on the Mall.

Mr. CUMMINGS. Again, I want to thank you for your 35 years of service.

Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Maryland.

The Chair will now recognize the gentleman from Tennessee, Dr. DesJarlais.

Dr. DESJARLAIS. Thank you, Mr. Chairman.

Mr. Jarvis, do you feel you are doing a good job handling this matter?

Mr. JARVIS. Yes, sir, I do.

Dr. DESJARLAIS. Do you think it is necessary that we are here today to discuss this?

Mr. JARVIS. I have no opinion on that.

Dr. DESJARLAIS. Why wouldn't you have an opinion?

Mr. JARVIS. I am a big believer in the three branches of government and I believe the legislative branch has its rights as does the executive branch.

Dr. DESJARLAIS. When do you suspect that this problem will be reconciled? We are all here today, this is time-consuming and it is obviously important that we are here. I am not sure you think it is important we are here but when can we count on you to have this problem solved so we do not have to have meetings like this?

Mr. JARVIS. We are planning very soon, I cannot give you a specific date, to begin the enforcement of the camping regulation. We feel we have given them plenty of time to come into compliance, we have given them plenty of warning, we are about to give them one more warning and recognition and notice and then we will be enforcing the camping regulation.

Dr. DESJARLAIS. Do you think that is the way it is handled across the country in various State parks that if somebody wants to go in there, not pay their fee, set up a tent, say they are protesting, that is okay and they can have about 100 days to sort that out?

Mr. JARVIS. Each of our First Amendment activities in places across the country are handled on a site by site, case by case basis.

Dr. DESJARLAIS. You think this one is being handled appropriately?

Mr. JARVIS. I do, sir.

Dr. DESJARLAIS. Chief Lanier, is this costing the taxpayer any money as far as additional police force being brought in to handle problems?

Chief LANIER. For the most part, we are using our Special Operations Division that normally handles protests on a daily basis but we had to pull overtime officers from the patrol districts and hold over officers so we do not have it impacting the community, so there has been a cost.

Dr. DESJARLAIS. Are there other people breaking laws that you are aware of?

Chief LANIER. I know there have been arrests at the site by the Park Police and we have made some arrests out in the D.C. public space.

Dr. DESJARLAIS. Is it patrolled at night? If some citizen just wanted to walk through the park, do you feel it is safe? There have been allegations that there is improper use of toilet facilities and I guess that would mean maybe going to the bathroom where you are not supposed to. If somebody did that out here on any of the other grasslands around the Capitol or near the White House, I assume they would be arrested?

Chief LANIER. On D.C. public space, it is prohibited.

Dr. DESJARLAIS. So that is a problem that is going on in McPherson Park?

Chief LANIER. I would defer to Dr. Akhter who has done the walk through, but it is my understanding that there have been some issues with that, yes.

Dr. DESJARLAIS. It seems if everyone was doing their job, we would not be here today. If there are laws being broken and people were being arrested and these problems were being resolved as they happened, it should not take 100 days to fix the problem.

Chief LANIER. I can sympathize a little bit with the process of getting gradual compliance because you have to do that and then deal with the courts in that case. I can sympathize a bit with the responses we have had to take with demonstrations in the city in the past.

Dr. DESJARLAIS. Dr. Akhter, what do you feel are the health risks not just for the people protesting but average citizens who want to use the facility? Are their rights being infringed upon?

Dr. AKHTER. I appreciate the opportunity.

Health risks are real to the protestors themselves and to the people at large. I say this not only because of the sanitary conditions that exist in the park, but also because people go back and forth. The virus, the bacteria and the others do not know any boundaries. There are homeless people in the mix who may have infectious disease, so that really creates the environment that is not healthy not only for the protestors, but for the residents and the rest of us who are visiting or live in the city.

Dr. DESJARLAIS. You feel that it is an unsafe situation that has arisen over the past 3 months?

Dr. AKHTER. It is the height of the situation that is in the center of our city and I think, with all due respect to my colleagues from the Federal Government, the big issue is lack of clarity and jurisdiction. The Federal Government has jurisdiction over the area. If they are allowed to stay, we better provide them the facilities and services that are needed for them to be healthy and for the community to be healthy.

Dr. DESJARLAIS. Who should pay for that?

Dr. AKHTER. I think if it is Federal land, the Federal Government should pay for it.

Dr. DESJARLAIS. The taxpayer should pay for it?

Dr. AKHTER. Absolutely. Somebody has to pay for these things, if we are allowing people to stay. My question is, this is the Nation's capital. We are the United States of America and people are living in suboptimal conditions where they are putting themselves at risk and the rest of the community at risk and nobody is really taking full responsibility for providing the services to them, so it falls by default on the D.C. Government for us to step in and try to do the clean up after the fact whereas there needs to be facilities right on the front end.

If these people are going to stay any length of time, I submit to you all that we provide them the services they need so they can be healthy and not pose any risk to our community.

Dr. DESJARLAIS. The point is there are laws being broken. We established that today. There is camping laws being broken, people are violating laws about urinating on capital property, but Mr. Jarvis does not think there is a problem here and he thinks he is doing a good job. I think we all should not be sitting here today if everybody was doing their job. Clearly, we have a bit of work to do.

I am out of time. Thank you.

I yield back.

Mr. GOWDY. I thank the gentleman from Tennessee.

The Chair would now recognize the gentlelady from the District of Columbia, Ms. Holmes Norton.

Ms. NORTON. Thank you, Mr. Chairman.

There are legitimate questions being raised here in the District of Columbia. The Federal Government has always cooperated well in order to handle them. These questions go to safety and health but they also go to First Amendment rights.

I want to register my objection that there is no Occupy representative here. The chairman of the full committee said he thinks they should be heard. There would be no better place for them to be heard but at a hearing concerning their alleged actions. This would be the place. This is not a country where we talk about people and do not invite them to defend themselves.

I want to congratulate the Park Police and the National Park Service.

Mr. ISSA. Would the gentlelady yield? I will be brief.

Ms. NORTON. If I can recover my time, of course I would then yield to the chairman.

Mr. ISSA. I ask unanimous consent I have 30 seconds to engage in colloquy.

Mr. GOWDY. Without objection.

Mr. ISSA. I thank the gentleman.

Madam, the best way I can put this is this hearing, at least from my view, was intended to be about what would happen with the next group of protestors now that we have set a formal precedent. Although within the committee's jurisdiction, if the gentlelady and the ranking member would like to have a minority day and have the other side come in and talk about why camped and why that should be allowed and why 400 other protests per year should be

allowed similarly, you are certainly welcome to, but I would hope you heard in my opening that this is narrow. We are not talking about this group. We are talking about the next group and the group after of how we are going to protect the District of Columbia from, if you will, having lots of these kinds of events.

I thank the gentleman and yield back.

Ms. NORTON. I thank the gentleman. We are aware of our rights for a minority hearing. The place to be heard is at this hearing, of course, because if we want to know what to do about the next group, the best way to understand that is to hear from all involved with this protest, not with only law enforcement officials or the officials of the Federal Government.

I want to thank the police, the various police departments for their approach to seeking compliance. If the District of Columbia wants to have some problems, if the Park Police in fact had not engaged in the kind of ramping down to get compliance, then you would have had big-time involvement of the D.C. Police Department.

Mr. Quander, are you aware that for years now, indeed for the 10-years since 911, I have been able to get an annual appropriation from the Federal Government that allows the District of Columbia to draw down the costs of demonstrations like the Occupy demonstration?

Mr. QUANDER. Yes, I am aware.

Ms. NORTON. Have you drawn down any of that money?

Mr. QUANDER. Money is being requested.

Ms. NORTON. So this is not costing the District of Columbia funds. If that money is drawn down, it can be paid for as it is always paid for because this is the Nation's Capital and while the chairman of the subcommittee is right that there is no preference in First Amendment rights, there is a deep sensitivity for how to enforce those rights at the seat of government. Have there been residents coming forward in significant numbers to complain about the presence of Occupy in our city?

Mr. QUANDER. There have been a number of residents.

Ms. NORTON. In large or significant numbers?

Mr. QUANDER. We have received a number of emails and residents.

Ms. NORTON. Is it not true that the District of Columbia, the Mayor and the City Council, while they have raised concerns about health and safety matters, the Mayor has asked for some change in where the occupation is taking place, that neither the Mayor nor the City Council have asked that these demonstrators be removed from Washington, DC?

Mr. QUANDER. The Mayor has not made that request.

Ms. NORTON. Is it true, Dr. Akhter, to read from your testimony with your concern about these and the rest—no, this is Mr. Quander's testimony. "Although there have not been any public health emergencies such as outbreaks of communicable disease or reported illnesses, we will remain vigilant in monitoring."

Your vigilance, of course—which will be paid for by the Federal Government—is what we are concerned about but Mr. Quander in his own testimony says that whatever have been the health prob-

lems, and there surely have been some, they have not presented major problems.

Mr. Quander, when you use the words escalating tactics, have you seen escalating tactics or have you seen just the opposite, an outbreak here and there; the occupiers get themselves together, quieted down themselves and keep the matter from escalating. Hasn't that been the pattern rather than escalating tactics?

Mr. QUANDER. What I said in my testimony is that our concern is for escalating tactics.

Ms. NORTON. Just a moment. This is a fact-finding hearing. Isn't it the case that there have not been escalating tactics? Shouldn't we give these demonstrators their due that there has been cooperation with the police and instead of escalating tactics, they have self-policed their movement? Isn't that the model we would like to see when demonstrators come to this city?

Mr. QUANDER. That is the model that we would like to see.

Ms. NORTON. Mr. Chairman, I come from a generation that tried a new tactic too. It was a new tactic to change the United States of America. Nobody much wanted it. When Resurrection City was out there and it was raining cats and dogs and there was mud during civil rights protests, nobody said because of your health, we are going to get you out of this place. I think it is incumbent upon us to respect the different tactics of different generations.

Let me say this as somebody who represents this city, has deep respect for the First Amendment first and foremost. What Mr. Zick said is very important to understand about the First Amendment and its enforcement. When you see me protecting First Amendment rights here, do understand that you are hearing it from a Member who spent the first part of her life as a constitutional lawyer protecting demonstrators, many of whom I disagreed with, including a case in the Supreme Court where I argued in face of a set of racists who wanted to continue their protest.

The First Amendment knows no advantage. The Tea Party people would get the same respect and I am confident the same kind of treatment from the Federal Government and the Park Service that they have gotten here. It is up to the District of Columbia and its services to adhere to the First Amendment as well as anybody else. You are very fortunate that we have been able to get you the funds so that this does not cost the city a dime. Her overtime will be paid for and it is important that the rights be seen in those contexts and that there continue to be and indeed must be even greater cooperation between the Park Service and the District of Columbia because guess what, neither of you is going anywhere and the demonstrators are going to continue to come.

This committee expects grown up responses as we have gotten from the Mayor of the District of Columbia and the Council of the District of Columbia, from all of its officials as well as from the Park Service.

I yield back the remainder of my time.

Mr. GOWDY. I thank the gentlelady from the District of Columbia.

The Chair would now recognize the chairman of the full committee, the gentleman from California, Mr. Issa.

Mr. ISSA. Thank you and I ask unanimous consent that the three additional minutes the gentlelady from the District took be allowed.

Mr. GOWDY. Without objection, Mr. Chair.

Mr. ISSA. Thank you.

My obligation as the chairman of this committee is first and foremost for the District of Columbia to ensure that we do no harm to the District. I am not for a moment going to side with the gentlelady, the delegate from the District, my friend, Eleanor, and say that just because we let you draw down on a payment that we are not harming you. I think we are.

I certainly think when the Mayor of the city sent to Mr. Jarvis a letter at the end simply saying "At a minimum, the Occupy D.C. sites at McPherson Square and at Freedom Plaza must be consolidated at Freedom Plaza to allow for elimination of a rat infestation, clean up and restoration of McPherson Square." That is the District of Columbia that the gentlelady represents and that I am honored to have oversight of.

I'm afraid many of you didn't get an answer.

Doctor, first with you, is that a problem that legitimately the District has a responsibility, needs to make sure occurs, that is not occurring today?

Dr. AKHTER. Mr. Chairman, I am not quite sure. The issue of jurisdiction has not been settled.

Mr. ISSA. I was actually talking about the rat infestation.

Dr. AKHTER. No jurisdiction. They never asked D.C. for a permit.

Mr. ISSA. Impacting residents of the District of Columbia until it is cleaned up, right?

Dr. AKHTER. That is why we are involved in this process. Nobody supports more the First Amendment right of the people than I do. I have taken oath twice, once becoming a citizen to uphold the Constitution and the other time, becoming the Director of Health for the city. We support that, but people must be healthy to be able to stand up, be heard and be seen. If they are living in rat infested places, that is putting them at risk and putting our residents at risk. This is no demonstration of their First Amendment rights.

Mr. ISSA. I think you have made your point very clearly. I appreciate your having an opportunity to do that.

I might point out that the ranking member representing Baltimore represents a city that handcuffed Occupy Baltimore protestors as did New York when they were trespassing.

Mr. Jarvis, you are the focus here because you are, in fact, turning a blind eye to 4 months of law breaking. You mentioned your background in law enforcement. I appreciate that there is discretion, but do you have discretion to ignore overtly criminal activity or do you have discretion to concentrate on the most egregious, to prioritize? Which is it and I do not ask you for a third answer if you do not mind?

Mr. JARVIS. We have the discretion to focus on the most egregious which we have made over 80 arrests.

Mr. ISSA. So you are focusing on the subpart but for 4 months saying, we will focus on people who commit criminal activities beyond the core criminal activity that led to those arrests, right?

Mr. JARVIS. We have focused on crimes against individuals, public urination and those types of crimes at the site.

Mr. ISSA. In your opening statement, you talked about First Amendment balance. Is somebody sleeping in a tent a legitimate First Amendment part of a protest, yes or no, please?

Mr. JARVIS. No, it is not.

Mr. ISSA. In fact, the moment somebody begins sleeping in a tent, basically using somebody else's asset, the American peoples' asset in a way not prescribed or allowed within the regulations set about for all citizens, the moment they do that they are committing a crime which you have an obligation to enforce, how many enforcement actions have you taken over people who have ceased protesting and are simply camping there?

Mr. JARVIS. To this date, we have taken none.

Mr. ISSA. I will ask you the rhetorical question I noticed when I made my opening statement you wrote down, are there parks in America in which park rangers usher people out of all or part of the park at sunset because in fact there are often designated camping areas and there are simply areas of the park you cannot be all night?

Mr. JARVIS. I believe that probably is true. I cannot tell you specifically where that might be the case, but certainly there are areas in our national parks that are closed at certain times of the day.

Mr. ISSA. That is for a number of reasons including the conservation of assets. Sometimes it is just plain money. You guard the campgrounds 24 hours a day, you do not guard all of very large Federal lands, right?

Mr. JARVIS. No, we try to extend our enforcement responsibilities throughout. I do want to correct you on this because it is an important point. Most of our national parks are open 365 days a year, 24 hours a day.

Mr. ISSA. For camping?

Mr. JARVIS. We have areas that are specifically identified for camping and we do have areas that camping is prohibited.

Mr. ISSA. I would ask I have an additional 2 minutes.

Mr. GOWDY. Without objection.

Mr. ISSA. I am an avid camper, both RV and tent over the years and a very old Boy Scout. Basically, it is a regular practice of the any Federal park that, first of all, they check to see if somebody is allowed to be a camper because you limit the number of campers and people who simply want to exceed that are ushered and you ensure that people are camping within lawfully designated areas, correct?

Mr. JARVIS. That is correct.

Mr. ISSA. Yet for some reason, there has been an exception here. Let me ask you the most important question I ask hopefully rightfully on the side of the District of Columbia. Can we expect additional exceptions like this in the future? Is this a one-time occurrence that we are going to bring to an end once and for all or is there an expectation that this or any administration can pick and choose based on whether they like or do not like the First Amendment rights being asserted and allow some to stay and others to go or are we going to uniformly simply say if you are a protestor, you get to stay on Federal lands while you are protesting?

Mr. JARVIS. The answer is that each First Amendment activity is going to be approached with the same set of principles.

Mr. ISSA. Okay. So camping is not a First Amendment. Camping is in fact a violation of law. The sleeping is a violation of the law. If protestors choose to camp, you and the Obama administration will make a case by case decision about whether or not you agree with the protestors' line, whether or not this group of protestors gets to stay and others get to leave, that is really what you are saying, isn't it?

Mr. JARVIS. No, I am not saying that. Whatever they are protesting is irrelevant to our decisions. Our decisions are based on the totality of the circumstance.

Mr. ISSA. In the history of the Park Service and the Federal Government, how many times have protestors been allowed to stay in campgrounds when it was clearly an unlawful activity, to your knowledge, and been allowed to consider it a First Amendment event by the Park Service?

Mr. JARVIS. Within my testimony, I specified at least three—when the farm workers' movement came here, lived on the Mall for 7 weeks; I indicated Resurrection City and they were here for at least a month on the Mall. We do not pick and choose. Each one is the totality of the circumstances and then our goal here from the beginning as well as the end is to gain compliance of all of our regulations. It has been an incremental enforcement and we intend to gain complete compliance with this group as well in particular as it relates to camping.

Mr. ISSA. Mr. Zick, as the minority's chosen witness, they did not choose the people sitting behind you, they chose you to speak on their behalf when asked who they wanted. Do you agree that incremental, selective and periodic, and some get it and some don't, is okay under the Constitution?

Mr. ZICK. I said you have to be very careful with viewpoint discrimination but I will say this with respect to camping, there is a world of difference between a recreational camper and somebody who camps as part of a protest. The Supreme Court did not say camping is not a First Amendment activity. It said the opposite. It did say the government had the authority to limit or prohibit, in *Clark v. CC&V*, that activity.

I do not join issue with whether or not the camping regulation has been enforced here but I take your point. It cannot be enforced against some groups and not others when they are exercising First Amendment rights because the government agrees or disagrees with the message. That is true.

Mr. ISSA. Thank you.

Thank you, Mr. Chairman, for focusing on this and hopefully we are bringing some resolution. I think we heard here today that the protestors are, in fact, being given notice and in a foreseeable period of time, a very short period of time will pass before they will have to find other accommodations and protest only during the day.

I yield back.

Mr. GOWDY. I thank the gentleman from California.

The Chair would now recognize the gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Normally, I would say thank you for this hearing but because of the tone and tenor, I am not going to say that. The tone and tenor of this hearing is rather disturbing.

I visited an Occupy camp in St. Louis, my hometown, Kiener Plaza. I found it to be orderly, organized and very sanitary. I went inside some tents and they had computers set up and all of that. It was very organized, so I did not experience what you say you have experienced here in D.C.

The tone and tenor of this hearing is on the wrong track. When we talk about peaceful assemblage in this country, I think back to being a very small child in the summer of 1963 and seeing the images come across my TV of those peacefully assembled in Birmingham, Alabama and were met by Bull Connor with dogs and fire hoses. He was wrong then and I think that the majority is wrong on this instance.

When you think about our First Amendment rights for all Americans to be able to assemble peacefully to voice their concerns about issues in this country, we should not try to tamp that down, we should not try to distinguish between one form of assemblage to another.

Former Secretary of Labor Robert Reich described the message of the Occupy movement this way. He says, "If there is a single core message to the Occupy movement, it is that the increasing concentration of income and wealth at the top endangers our democracy. With money comes political power, yet when people without money assemble to express their dissatisfaction with all this, they are told the First Amendment doesn't apply. Instead, they are treated as public nuisances, clubbed, pepper sprayed, thrown out of public parks, and evicted from public spaces."

Professor Zick, are government agencies like the Park Service limited in what steps they may take to contain a protest by their legal obligation to uphold the First Amendment rights of the protestors?

Mr. ZICK. They are.

Mr. CLAY. My understanding is that the seminal Federal case, *Quaker Action v. Morton* is decades old, isn't that right?

Mr. ZICK. That is correct.

Mr. CLAY. Is there anything new about that obligation or about Occupy D.C. that would make the Park Service's recent decisions out of line with decades of past practice?

Mr. ZICK. There is nothing new in the jurisprudence. I think what is new and what people have been pointing out is quite new is the use of this kind of a protestor demonstration to make a public point, to join a public debate. The use of public place in this fashion is, I think, unprecedented. The closest thing I suppose would be a sit-in. This is a large, outdoor sit-in activity that does pose some stress for public concerns of safety and health and so forth, but there is nothing in the jurisprudence that has changed since *Quaker Action* in the 1970's, no.

Mr. CLAY. This is just another form of peaceful assemblage of Americans protesting what they think is wrong and having a voice in their government, is that correct?

Mr. ZICK. To the extent it is peaceable assembly and to the extent it is not as we have heard testimony the criminal laws are being enforced.

Mr. CLAY. Thank you.

Mr. Chairman, I yield the balance of my time to the gentlewoman from the District of Columbia.

Ms. NORTON. I thank the gentleman for yielding.

Mr. Jarvis, let me again thank the Park Police that there has not been escalation, in part, because of how the occupiers have conducted themselves, but also because the Park Police have done very expert policing to ramp down the problems and to get enforcement. We want more of that because we do not want the city torn up by demonstrators.

Let me ask you, Mr. Jarvis, has the bulk of the police work been done by the Park Police rather than the District of Columbia police?

Mr. JARVIS. In the case of the site itself, McPherson Square, the U.S. Park Police, the National Park Service.

Ms. NORTON. So the daily policing has not been a matter for the city, but the Federal Government has, in fact, been doing the daily policing for the most part?

Mr. JARVIS. Yes, ma'am.

Ms. NORTON. In light of Dr. Akhter's concern about rats, have you been in touch with the Public Health Service or Dr. Akhter and the District of Columbia Public Health Service at all, sir?

Mr. JARVIS. Yes, the Public Health Service Corps works for the National Park Service. Captain Chuck Higgins has been working directly with the District on a Public Health review of the site.

Ms. NORTON. They are cooperating. You believe they will get any matters involving public health under control because of cooperation between the Federal and the District Governments on public health matters?

Mr. JARVIS. Yes, I do believe that.

Ms. NORTON. Do you agree, Dr. Akhter, as well?

Dr. AKHTER. We have started the communication. There has been one meeting between Captain Higgins and myself. We have discussed the issues and mutually agreed that action needs to be taken to make sure that the site is cleaned up and is healthy for the protestors and our residents.

Ms. NORTON. Thank you.

Mr. GOWDY. I thank the gentlelady from the District of Columbia and the gentleman from Missouri.

The Chair will now recognize the gentleman from North Carolina, Mr. McHenry.

Mr. MCHENRY. I thank the chairman and I would like to yield the balance of my time to the chairman so he can continue his line of questioning from earlier.

Mr. GOWDY. I thank the gentleman from North Carolina.

Professor Jarvis, I know that you are an expert in research. Do you also teach criminal process or constitutional law? I am sorry, Professor Zick?

Mr. ZICK. I am sorry. The question again?

Mr. GOWDY. Are you familiar with criminal process and constitutional law?

Mr. ZICK. I teach constitutional law.

Mr. GOWDY. What is selective prosecution?

Mr. ZICK. Singling out and individual for prosecution on some sort of invidious basis.

Mr. GOWDY. Could it also include a misuse of your prosecutorial discretion?

Mr. ZICK. I suppose. We are getting far afield of my expertise.

Mr. GOWDY. Mine too. You are the professor.

Mr. ZICK. Not necessarily criminal procedure, but it certainly could.

Mr. GOWDY. It seems clear that you can't enforce or non-enforce based on content. Would you also agree you cannot enforce or non-enforce based on geography or jurisdiction?

Mr. ZICK. I am not sure I understand in what sense.

Mr. GOWDY. Is there a different First Amendment rule for the District of Columbia than there is for Utah?

Mr. ZICK. I think there is a heightened sensitivity and, in part, for this reason. You have a right to petition the Federal Government. You can do that far more effectively from two blocks from the White House than you can from Cleveland.

Mr. GOWDY. You think that there would be a different First Amendment analysis based on where you are in this country?

Mr. ZICK. I am not sure it would be different First Amendment analysis, but as someone put it, there would be a heightened sensitivity to the First Amendment right in question. The doctrine would not change.

Mr. GOWDY. That creates a very curious result. The closer you get to the District of Columbia, you have more First Amendment rights.

Mr. ZICK. I do not know that you have more First Amendment rights, but the D.C. Circuit, in particular, has recognized that given, again, the location, the proximity to the seat of government, there is a special sensitivity for First Amendment rights.

Mr. GOWDY. But this is not the only seat of government. There are 50 capitals, aren't there?

Mr. ZICK. Yes, sir.

Mr. GOWDY. There are thousands of county seats, so you are not arguing that because this is the seat of the Federal Government, that they would have more First Amendment rights than the capital of Nevada, are you?

Mr. ZICK. I am not arguing necessarily there are more First Amendment rights, but in the balance the courts undertake in terms of balancing free speech rights against other concerns, I think it is appropriate to take that into account. I think some courts have, in fact, done that, the D.C. Circuit chief among them.

Mr. GOWDY. I want you to balance this. Mr. Jarvis, have there been any arrests for camping in the country in the last 12 months?

Mr. JARVIS. I have no idea.

Mr. GOWDY. What do you think?

Mr. JARVIS. I would not like to speculate on that. The National Park system is a big place.

Mr. GOWDY. Right. Let me say, Mr. Cummings if it was entirely correct to commend you for your 35 years of service. In a former life, I actually had the pleasure of prosecuting some of your cases

in South Carolina. My fear is this. I understand you are in a difficult position. I really do.

My fear is this. If someone in South Carolina, Georgia, Utah or Maryland is going to be charged with camping, it makes it really difficult to say that we are one Nation under the law if you have different applications of the law based on where you are. I think you and I both, if we look hard enough, could find someone who was arrested and prosecuted for camping.

To Professor Zick's point that there is something called selective prosecution, I would be curious how we explain to that person who paid a fine or perhaps was incarcerated what the difference is.

Mr. JARVIS. I think that as the professor indicated, recreational camping is different than First Amendment activities that include a 24-hour vigil.

Mr. GOWDY. Is there First Amendment sleeping versus recreational sleeping?

Mr. JARVIS. In this case, we have a 24-hour vigil which we do believe.

Mr. GOWDY. That actually was not my question. Is there First Amendment sleeping versus recreational sleeping?

Mr. JARVIS. I do not really understand that question.

Mr. GOWDY. Here is the question. You already said that sleeping is prohibited because it is one of the examples of camping. You also said people are sleeping in McPherson Square. My question is, are there certain constitutionally protected forms of sleeping or are you admitting that you have selectively prosecuted certain people and not others?

Mr. JARVIS. No, I am not admitting in terms of selective prosecution. What I am saying is that we have gained compliance through an incremental approach. The important point here is that sleeping and camping is an individual regulation. It is against an individual, not a group.

Mr. GOWDY. How does a group sleep?

Mr. JARVIS. There is no regulation that we can apply toward Occupy D.C. on camping. There is a camping regulation that we need to build a body of evidence around an actual individual, a person with a name, that they are camping at McPherson. It is our intent to do that but we have done that at the end of a long progression of gaining compliance and health and safety first.

Mr. GOWDY. Mr. Jarvis, I want to say again, Mr. Cummings was right, you have a very difficult job. I knew that actually before he said it, but he is to be commended for saying it again. As everyone on both sides has said, you have a difficult job, just like Ms. Holmes Norton had a very difficult job when she had to defend someone whose speech she disagreed with. That would be a very challenging thing to do.

My concern is not today, it is not this movement, it is not what is happening in Washington. My concern is the fabric of this republic is going to unravel if we treat people differently. It is unraveling because there is a perception that we treat people differently. If you can guarantee me that the exact thing would happen in Utah or South Carolina, or if people who had a conservative ideology came to McPherson Square, I would still say this. Either enforce

the regulation or do away with it, but to have a regulation and not enforce it undermines respect for the rule of the law.

I think there has been a request for a second round of questions. Mr. Davis, are you amenable to that?

Mr. DAVIS. Yes, sir.

Mr. GOWDY. Would it suit if we had an abbreviated 3 minutes as opposed to five?

Mr. DAVIS. I think that would work.

Mr. GOWDY. With that, I guess I was finishing out Mr. McHenry's time. I do not want to monopolize it. Mr. McHenry or Mr. Walsh? I am going to give it to Mr. Walsh because I have been talking too much.

Mr. WALSH. I will be brief. Thank you, Mr. Chairman.

Mr. Jarvis, let me just second what the chairman just said. I respect the job you have and I understand what you are going through. You said one thing in the first line of questioning that is eating at me and maybe I misinterpreted it. You said that because the word occupy was in the name of this protest group, you were treating them a little differently. Was that right?

Mr. JARVIS. No. If I could correct the record on that, let me just say that each First Amendment protest has its unique components. In this particular one, as stated by the professor, their principle behind their First Amendment activity is to "occupy" a piece of public land.

Mr. WALSH. Which has given you a bit more discretion in how you deal with them?

Mr. JARVIS. I would say a bit more of a challenge in how we deal with it.

Mr. WALSH. If I had a group that was "Live-In D.C.," would you let me live there for a couple years? Would you have more discretion with how you would deal with me if the name of my group was "Live-in D.C.?" Do you see what I am saying?

Mr. JARVIS. I see what you are saying but I am not using the name say with a capital "O." I am using it in terms of a verb, they are occupying the site.

Mr. WALSH. Right.

Mr. JARVIS. Any protest that comes to Washington, DC, with First Amendment rights has to be evaluated in terms of how we deal with them to gain compliance. As we said, it is unprecedented. We are working our way through this.

Mr. WALSH. Mr. Chairman, with your indulgence, we had staff last night pay a visit to Occupy D.C. With your permission, I would love to show just a 2-minute video. I think it seconds a lot of what Mr. Jarvis has said as far as them camping and sleeping.

Mr. GOWDY. Without objection.

[Video presentation.]

Mr. WALSH. Thank you, Mr. Chairman.

Mr. GOWDY. Thank the gentleman from Illinois.

The Chair would now recognize the other gentleman from Illinois, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Director Jarvis, let me ask, how do you distinguish between D.C. Occupy protestors and homeless people who might find their way into McPherson Square?

Mr. JARVIS. This has been a concern, Congressman, that we do believe some homeless people have moved in to join the occupiers and have taken advantage of the situation there both in terms of the services. That is one reason we have been working with the Metropolitan Health Department to provide social services at the site as well. I think they have been subject to some of the arrests we have made at the site for a variety of activities but it is a concern.

Mr. CUMMINGS. I am delighted to know that there are some homeless people who have joined the Occupy protestors.

In your testimony and in response to inquiry today, you mentioned a number of times that there were other long term vigils—veterans, farmers. Did they go to hotels, to your knowledge, when they were there? How did they maintain themselves? Did they come out during the day and then in the evening go down to the Grand Hyatt or someplace, get a room, sleep and then come back the next day and get on their tractors?

Mr. JARVIS. They maintained 24-hour vigils in each of those situations. I am not knowledgeable enough about those actual protests to give any details as to how they managed all of that activity.

Mr. DAVIS. Then it would be fair to suggest that perhaps these protestors, Occupy D.C., are handled no differently than what other long term vigil protestors have been treated?

Mr. JARVIS. I think that is correct, yes, sir.

Mr. DAVIS. Let me thank you very much because the more I listen to this discussion and the more I hear what has taken place and what is taking place, the more I am convinced that your 35 years of law enforcement have served you well, that you have made some solid, sound, rational decisions and you really represent the best of what law enforcement ought to be.

I commend you and I commend the Park Service for the way in which you have handled a very difficult situation and that you really understand what it means to have freedom of speech, First Amendment protection.

I yield back, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Illinois.

The Chair would now recognize the gentleman from California, the chairman of the full committee, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I apologize. We had a vote next door in Judiciary. As I come back, I have just a couple quick questions.

Mr. Jarvis, we had a lot of debate about the past and the future. At times, protestors have come to the city, they camped and they have been in some way accommodated. You made that point in your opening statement. Have there been times when protestors came, they camped and they were not accommodated?

Mr. JARVIS. I have no information on that. I do not know.

Mr. ISSA. That was the subject of today's hearing and you came not knowing if Park Police had ever arrested somebody who asserted they were a protestor and you said, that is nice, but you cannot camp here?

Mr. JARVIS. I am sorry, I do not have that but I would be absolutely glad to find out and come back to the committee with that information.

Mr. ISSA. We would appreciate an answer for the record.

Mr. JARVIS. Yes.

Mr. ISSA. Mr. Zick, this a constitutional question to a great extent and this is not the constitutional committee. This is the D.C. Committee more than anything else. If we were to make it clear in the future through some statute, in addition to the Supreme Court decision, that protestors would not be accommodated unless that area was either permitted or by requesting a permit, therefore, obviously port-a-potties and all the other facilities which we do for various demonstrators even if they are not staying the night or in fact, they stayed at a facility that was already allowed.

In other words, if we made it clear in statute that it was not discretionary and we did so uniformly by statute would that pass the smell test of there are plenty of places to protest but you cannot sleep there, it is not a constitutional question. In other words, your testimony today and this problem, isn't ambiguity to a certain extent a problem?

Mr. ZICK. The regulation, as it is written, calls for a determination based on the totality of evidence of whether or not it is reasonably apparent that people are using it as a living accommodation. That is lawyer speak for this is ambiguous but also it is open to discretionary enforcement.

With respect to whether you can write new rules in response to a protest, that could be problematic. They have tried that in some other jurisdictions in response to the Occupy protest, I believe in Nashville, and the courts found that to be problematic.

Mr. ISSA. We are talking about not for this particular group of protests but for the future, for those that will come for issues not yet at the forefront.

Mr. ZICK. If you are talking about that and if you write and enforce the law in content neutral terms, to use your language, Mr. Chairman, it would pass the First Amendment smell test.

Mr. ISSA. Let me couch it in a final question for me for today for each of you. Would that be helpful, in a post-protest period—I am not talking about this week or next week when everyone would view it related to a particular group—would this be helpful? I will start with the Park Service and come the other way. Would this be helpful for you to have predictability and certainty for the future? Mr. Jarvis.

Mr. JARVIS. I think first and foremost we would have to evaluate whatever language you would be proposing so we completely understand its implications and how we would be tasked with enforcing it on the ground and whether or not it would be subject to challenge within the courts which creates additional burden.

Mr. ISSA. Forget all that. It is not your job. From the standpoint of if you were told that one of the elements for discretion was not somebody saying I am here in a vigil, that would not exempt in any way, shape or form their overnight camping. If we clarified that, and we will assume the men and women in black robes will look at it and approve it, would that make your job better long in the future, your successors need to, in fact, bring uniformity and clarity particularly as to the First Amendment?

Mr. JARVIS. I am not going to pass judgment.

Mr. ISSA. The gentleman takes a pass on that.

Mr. Zick.

Mr. ZICK. I think given that the touchstone of First Amendment analysis is content neutrality, predictability would be beneficial. I would be concerned about the impact on First Amendment rights. It makes no difference here that I disagree with the CCNV case. It is the law of the land, but in terms of writing something that is clear on its face and neutrally applied, yes, that would be a plus.

Mr. ISSA. I look forward to seeing your involvement if we get to that point.

Dr. Akhter.

Dr. AKHTER. I believe, Mr. Chairman, we have adequate laws, rules and regulations in the District of Columbia that allow me to do my job in a respectful manner.

Mr. ISSA. Chief, would this be good for you if you knew what to expect on Federal lands adjacent or within the District of Columbia?

Chief LANIER. For law enforcement purposes, predictability and very clearly written laws are always really important, especially when you are in depositions, and predictability for planning purposes, especially in our jurisdiction, things are always moving, at least we try and keep them moving.

Mr. ISSA. Mr. Quander? You get the last one on behalf of yourself, the Mayor and the Council.

Mr. QUANDER. Predictability and clarity are always extremely beneficial.

Mr. ISSA. Thank you.

Mr. Chairman, thanks for the indulgence in my last round.

Mr. GOWDY. I thank the gentleman from California.

The Chair would now recognize the gentleman from Maryland, the ranking member of the full committee, Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

As I sat through this entire hearing, I must tell you that I wish we had as much concern about the people who have lost their houses, the Americans who have suffered some \$7 to \$11 trillion worth of losses. It baffles me, it truly does, that we have now had over 118 hearings, 342 witnesses in this committee and when we ask for one of the bankers to come tell us why they were robo-signing, violating the law, we cannot get them. The chairman does not want them to come in to explain to us why it is that they have illegally put people out of their houses, offenses they have already admitted to.

I guess people who are protesting and are part of Occupy look at a hearing like this and say, this is why they are protesting. This is why because they see their government, particularly a committee that is supposed to be standing up for them not addressing the issues that go to the center of their lives. It is a damned shame because I listened to you, Mr. Jarvis, and I get what you are doing. Some people would try to call it selective prosecution.

You are a practical man, you are a law enforcement officer, you have been trained. You do not want to incite a situation, you do not want it to get worse, so you try to contain it and try to work with people because you understand these people are human beings. They are human beings and they have come because they are concerned about what their government is not doing.

I am hoping that maybe a tiny bit of the energy we have put into this hearing we will put into addressing the very things that the Occupy movement is all about and the things they are concerned about. Maybe then we will not have to have these hearings, then we will not have to worry about whether there will be another Occupy.

As I sit here I am saying to myself, I understand. I get it. I think about police officers and I watch these ladies and gentlemen of the Capital Police. They do it to perfection. I have seen situations where things could have gotten completely out of hand, but they find a way to try to resolve the issues so people can still have their rights fulfilled, do their protests and whatever.

I am just hoping that just maybe some of the message will come through to us that maybe we ought to have a hearing and bring in some of the guys and ladies who may have been the cause of the problems that our people are going through or the cause of some of those people sitting in those very camps who have been thrown out of their houses.

With that, Mr. Chairman, I yield back.

Mr. GOWDY. I thank the gentleman from Maryland.

The Chair would now recognize the gentlelady from the District of Columbia, Ms. Holmes Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Chief Lanier, would you say the Occupy movement was predictable?

Chief LANIER. Yes. We were not the first Occupy camp, so yes, we knew that Occupy was coming.

Ms. NORTON. Not here in the District of Columbia. When the first Occupy protest broke out in New York, could that have been predicted?

Chief LANIER. No.

Ms. NORTON. I ask that question only because above all, law enforcement needs to have ample discretion. The best way to get slapped down is to get an ironclad rule written into law that then goes up to the courts and up to the Supreme Court. I speak to you as a First Amendment lawyer who has been there and done that. It would hurt you as much as it would hurt the occupiers and I do not think we want more tests of that kind, we want more compliance and certainly no escalation of violence.

Mr. Jarvis, it would appear that the responses of the occupiers have affected the kind of enforcement that the Park Service has deemed to be necessary. Here is a question I would have asked the occupiers if there had been a witness but you are the next best thing, so I am going to have to ask you.

What steps have the occupiers taken to police themselves and to respond to the concerns that you have raised or that the police or others have raised?

Mr. JARVIS. Over the period of months I have been working with them, they have executed a number of things voluntarily in terms of site cleanup, the areas in which they are distributed in McPherson. One comment was made earlier that the National Park Service is providing the port-a-potties. That is not true. The occupiers are providing both the services and the cleaning of those port-a-potties, so they have brought a great deal of organization to the site.

I think the relationship we have on the ground is significantly different than when they first arrived. I walked through the camp myself last week with U.S. Park Police. We were greeted friendly and were able to talk directly to many of the demonstrators. They thanked us for the work that we were doing there.

Ms. NORTON. I certainly want to go on record to thank the Occupy movement for being responsive to the police and to remind them that as they have head from the rostrum, and perhaps even from the table, there are some who would not be as friendly to First Amendment rights and the more we can call their bluff, it seems to me, by cooperation and with the non-violence exemplified by the icon of successful nonviolence, Dr. Martin Luther King, the better off we would be.

I have to ask Mr. Zick about this notion of the Nation's Capital as a special place. During the Arab spring, you could not get to the floor but people were competing to egg on all of the demonstrators of the Arab spring, egg on, even if they brought a revolution, egg on even if they brought down a government that had been friendly to the United States of America, to the floor we all came on both sides of the aisle and of course, there was a revolution. Many of them said they had looked to demonstrations in this country and were very grateful for the response we have had in this country.

The place they look to is not Oakland or Portland or my good friend, and he is a good friend, will forgive me, not even Charleston. The place they look to I daresay is the Nation's Capital. Therefore, while I agree with the chairman about how the Supreme Court will look at the First Amendment for what it is, if I may say so, to confer a set of preferred rights. That is how important First Amendment rights have been in our country. If you look at the five-four split on the Court, isn't it interesting that there are not many splits when it comes to the First Amendment.

I would like to ask your expert opinion, given the place where we are and its visibility to the world what the effect of suppression of the Occupy movement in the Nation's Capital would have been had the Park Police acted in ways other than how they have chosen to act?

Mr. ZICK. I think suppression anywhere would be problematic, but I take your point. This is a special place not in the sense that it confers special rights. I think that is an important point to keep in mind, but the context is critical. The places we are talking about, the National Mall, Lafayette Square Park. This was a point made by Justices Marshall and Brennan in the CCNV case, those are unique places not only because your right to petition the Federal Government applies here in the District and not elsewhere, that is a special right, but even with respect to speech and assembly rights, those are iconic, sacred, inscribed places in our history and I think that would send a very bad signal to the public at large and maybe to the world at large with respect to our respect for First Amendment rights that we tell the world are exceptional.

Ms. NORTON. Thank you very much.

Mr. GOWDY. I thank the gentlelady from the District of Columbia.

Dr. Akhter, briefly, are you familiar with any civil liability exposure the District may have?

Dr. AKHTER. No, Mr. Chairman, I am not aware at this time.

Mr. GOWDY. Have you been immunized by the Federal Government for any civil lawsuits that may take place as a result of anything that may happen?

Dr. AKHTER. Mr. Chairman, I am not aware I have been immunized by the D.C. Government as a government employee.

Mr. GOWDY. I was not referring to your own personal immunity. I hope you do not need any. I hope I do not need any either. My concern, I guess, Professor Zick, you correct me if I am wrong, it has been a long time, evidence of the violation of a rule or regulation can be evidence per se or evidence of negligence in a civil suit, right?

Mr. ZICK. Yes, sir.

Mr. GOWDY. I guess I will finish where I started. I do not understand the sense or the use of having a rule or regulation if it is not going to be enforced. It strikes me that the process we go through in this country is if you do not like a law or a rule, you change it. If you do not feel you can change it, we have a long, rich history of civil disobedience in this country. The most famous epistle on civil disobedience was written where, Professor Zick?

Mr. ZICK. I am sorry?

Mr. GOWDY. See if you would agree with me. The most heinous letter with respect to civil disobedience was written where?

Mr. ZICK. In Birmingham jail?

Mr. GOWDY. Jail, right? Not Birmingham, but the jail.

My point is this. If you do not like the law, change it, but to ask Mr. Jarvis, Chief Lanier, the Capital Hill Police who all have very difficult jobs to also have to decide which laws to enforce and which ones not to. Mr. Cummings and others have spoken very eloquently about the frustration with a multi-tiered society with respect to fairness. We have exactly the same issues if we have a multi-tiered society with respect to which laws we are going to enforce and which ones we are not.

My advice is either enforce the rule or regulation as written or change it but selecting it in some States and not others will undermine respect for rule of the law.

With that, on behalf of all of us, we want to thank all of the witnesses for your accommodation toward one another, for your respect and expertise with respect to your interactions with us on the panel.

With that, we are adjourned.

[Whereupon, at 11:40 a.m., the subcommittee was adjourned.]

