

**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

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 30th 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.