

Activist's Suit Against City Survives

Judge Refuses to Dismiss Civil Rights Claim Arising from Gays' Protest at Cathedral

BY DEBORAH PINES

A GAY ACTIVIST'S federal civil rights claims stemming from his 1989 arrest outside Saint Patrick's Cathedral may be pursued against New York City even though the arresting officer has been dismissed from the suit, a federal judge has ruled.

An earlier decision found the arresting officer, Richard Molloy, was protected by qualified immunity. "It is still an open question whether a constitutional violation occurred and whether a municipal policy or custom 'caused that violation,'" Southern District Judge Louis J. Freeh wrote in *Deagle v. New York*, 90 Civ. 8203, released last week.

The earlier decision was not based on a finding that Officer Molloy had probable cause to arrest the plaintiff, Richard Deagle, Judge Freeh noted.

Instead, it was made on the narrower finding that "officers of reasonable competence could disagree as to whether Molloy had probable cause," he noted.

Officer Molloy arrested Mr. Deagle, a graphic artist from Jersey City, N.J., during a demonstration by the activist group, ACT UP (AIDS Coalition to Unleash Power), on Dec. 10, 1989. The group shouted slogans and shook police barricades to protest the Catholic Church's stance on AIDS and gay issues, particularly its opposition to a condom distribution program in the public schools.

At 12:40 p.m., Officer Molloy arrested Mr. Deagle for assault in the second degree, inciting to riot, riot in the first degree, harassment, disorderly conduct and resisting arrest.

Mr. Deagle was jailed for two days, then released on his own recogni-

zance. He made 12 court appearances for which Officer Molloy never appeared to substantiate the charges, according to Mr. Deagle's suit. On Aug. 2, 1990, all charges were dismissed for failure to prosecute.

In his earlier decision, Judge Freeh found that videotapes of the demonstration indicated "while the demonstration was not violent, it was tumultuous and, at times seemed on the verge of deteriorating into a full-

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IN BRIEF

Decisions of Interest

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fledged riot." Before Mr. Deagle's arrest, Officer Molloy had been struck by a wooden barricade, Judge Freeh noted.

In last week's ruling, Judge Freeh rejected the City's reliance on two First Circuit cases which held that where a police officer's conduct has been found objectively reasonable there can be no causal connection between the challenged municipal policy and the alleged constitutional violation.

Judge Freeh said the Second Circuit has held differently and he called the First Circuit rulings unpersuasive.

"While we have found that a reasonable officer could conclude that probable cause existed to arrest Deagle, a jury could still find that no such

cause existed and thus, that Deagle's constitutional rights were violated," Judge Freeh wrote.

"Under those circumstances, Deagle would be entitled to try to show that some municipal custom or policy 'caused' that violation of his constitutional rights."

Laura Gentile of O'Dwyer & Bernstein represented Mr. Deagle. Sam Moriber, Assistant Corporation Counsel, represented the City.