

## **Attachment No. 1**

### **Nelson v. Streeter, et.al., No. 88 C 5434**

## **JUDGMENT ORDER**

### **PURPOSE**

In the course of our daily activities, we may be confronted with situations in which an audience is hostile to the lawful expression of some individual or group of individuals. An angry crowd may gather around an individual making a speech in a public park, or people may assemble to protest an art exhibit they find offensive. All individuals have the right to express their opinions, but no one has the right to interfere with the expression of others.

In these types of hostile audience situations, we as police officers have important obligations. We have a general duty to maintain public order and to protect persons and property from harm; these are important governmental interests. But we have an equally important duty under the First Amendment to protect lawful expression from a hostile audience.

The purpose of this Department directive is to provide some guidance to Department members facing a hostile audience situation.

### **BACKGROUND**

The First Amendment protects the rights of all persons to freedom of speech. In enforcing the protections of the First Amendment, we must approach our responsibilities with the neutrality of professionalism. We must protect the free speech rights of all persons, even if we as individuals do not personally like or agree with the particular message or position or philosophy espoused. Likewise, we must protect lawful expression even if other people are offended by it. These are fundamental principles embodied in the Department's mission statement and in the Law Enforcement Code of Ethics we have sworn to uphold.

Of course, not all speech is protected under all circumstances. For example, the government also has the right to impose reasonable time, place and manner restrictions on speech. Likewise, the expression of lawful speech does not excuse the commission of other, unlawful behavior. As police officers, we have an obligation to arrest individuals who are violating the law, even if they are also engaged in First Amendment activity. Except for specific circumstances such as these, however, we have a duty to enforce the broad protections of the First Amendment vigorously and impartially.

No person has a right to violate any applicable state law or municipal ordinance merely

because that person is engaging in expressive activities. Such persons may be cited or arrested, as appropriate, and any physical evidence relevant to the offense may be seized. When an individual has not violated any law, however, and the threat to public order arises solely from the reaction of a hostile audience, we must protect First Amendment rights.

The Department's responsibilities in hostile audience situations are not trivial or insignificant. The open expression of ideas is one of our nation's most cherished freedoms. It is a fundamental principle that sets us apart from so many other nations.

For police personnel, the First Amendment carries particular importance. As part of the community, all of us as individuals enjoy and frequently exercise our First Amendment rights. As police officers, we have a unique obligation to uphold and protect the free speech rights of all members of the community, regardless of how unpopular or controversial their ideas may be. This is a unique responsibility that we are uniquely qualified to carry out.

## **PROCEDURES**

In a hostile audience situation, where there are threats to a speaker, artist, exhibitor or art work, or where there is a danger of harm to persons or property, police officers should endeavor to proceed as follows:

1. Where art work or other expressive material is involved, officers should try to establish who has possessory rights to the material, including ownership and the right of custody.
2. Assuming that the speaker, artist or exhibitor is lawfully present on the property, officers should advise them of their right to continue their expression at the original site, except under the circumstances identified below.
3. If the speaker, artist or exhibitor decides to continue its expression at the original site, officers should commence or continue police protection so as to allow the continued expression, except under the circumstances identified below.
4. Officers should summon a supervisor to the scene who will determine if the assignment of additional police personnel is necessary.

Where police officers determine that expression cannot continue at the original site due to the activities of persons hostile to the expression, police officers should endeavor to proceed as follows:

1. The highest ranking sworn member on the scene, or if reasonably possible, the Superintendent or a member acting in his stead will determine: (a) that all police

resources reasonably available have been deployed to maintain the peace and allow the expression to take place; (b) that police efforts to take direct action against those violating the law have not been successful; and (c) that there is a threat of imminent violence that police are unable to control.

2. If reasonably possible, officers should consult with Department or City of Chicago legal advisors.

3. The expression may be discontinued at the original site where the highest ranking sworn member on the scene, or if reasonably possible, the Superintendent or a member acting in his stead, determines that order can be restored only by taking the expressive material into protective custody, or otherwise discontinuing the expression, and that available alternatives of continuing private custody have been considered and cannot be employed.

4. Any seizure into protective custody of expressive material must be of the shortest possible duration. The material seized will be inventoried and shall be returned to its owner or custodian at the earliest opportunity, and police protection continued as required by the circumstances at the original site. The owner should be advised of his right to immediately reclaim the expressive material at the unit of inventory.

**END OF TEXT OF JUDGMENT ORDER (88 C 5434)**