

Munger Tolles Protects Rights Of Ferguson Protesters

By Lisa Ryan



Law360, New York (December 12, 2014, 4:56 PM ET) -- Munger Tolles & Olson LLP joined pro bono forces with the American Civil Liberties Union to block law enforcement from prohibiting peaceful protesters from standing still on the sidewalk during the recent unrest in Ferguson, Missouri, following the shooting death of unarmed civilian Michael Brown.

The California-based firm successfully argued in October that the "five-second rule" — introduced by law enforcement officials in August to deter the protests by barring people from standing still on a St. Louis county sidewalk for more than five seconds — was unconstitutional. Munger Tolles represented ACLU organizer Mustafa Abdullah pro bono in his fight against the rule after he had been threatened repeatedly with arrest for standing still while informing protesters of their rights, and even for standing while praying with them.

"I hope that [this ruling] communicates the message to law enforcement in Ferguson and elsewhere that they have to respect the rights of peaceful protesters, and that organizations like the ACLU of Missouri and lawyers at private law firms will be willing to step in to protect peaceful protesters' rights if law enforcement steps over that line," Munger Tolles partner Grant A. Davis-Denny said.

The firm got involved in the fight at the urging of Munger Tolles associate Thomas Paul Clancy, according to Davis-Denny. Though still in his first couple of years at the firm, Clancy reached out to his partners after seeing the news coming out of Ferguson, telling them he thought the firm should get involved.

"The ability of protesters to peaceably assemble — especially when community tensions are high — is a critical First Amendment right," Clancy said. "And prohibiting peaceful protesters from standing still on sidewalks struck me as a serious violation of our constitutional rights. Given the scope and complexity of the issues in Ferguson, I thought our firm could and should play a role in protecting the rights of peaceful protesters."

Davis-Denny and the other partners agreed and began looking into ways they could help the protesters in Ferguson. The firm learned that the ACLU had already filed a suit against the "five-second rule" and that U.S. District Judge Catherine Perry on Aug. 18 denied its request for a temporary restraining order. Munger Tolles jumped at the chance to take over the reins as the ACLU pursued a preliminary injunction from the same judge.

Abdullah, the suit's plaintiff, is a member of the ACLU's staff who goes out into the community to educate citizens about their rights, according to Davis-Denny. In Ferguson, he handed out "know your rights" cards to protesters and spent a substantial amount of time talking with protesters about their concerns.

"Before this rule was announced, he was able to walk up to protesters ... and have some really productive discussions, but the day after the rule was adopted, he was approached by several different officers and given different interpretations of what the rule entailed," Davis-Denny said.

The plaintiff was told he couldn't stand still for five seconds, and then told he couldn't stand still at all. Whenever he momentarily stood still, he was asked if he had some place to be going, according to the attorney.

The firm faced the daunting task of arguing in favor of a preliminary injunction in front of a judge who had recently ruled in favor of the law enforcement rule. The firm brought in several peaceful protesters from Ferguson who had been affected by the rule and who argued their First Amendment rights were being impeded.

Munger Tolles also brought in an expert in police practices as a witness in the hearing. The expert told the judge that, in all of his experience, he had never heard of another police department in the U.S. implementing such a drastic rule, Davis-Denny said.

Throughout the hearing, the firm emphasized that, rather than deter the protests, the rule actually lit a fire under the protesters. It burdened their abilities to communicate with each other and was enforced inconsistently, which actually increased tension in the protest areas because people felt they were being treated unfairly, according to Davis-Denny.

Judge Perry ultimately agreed, granting a preliminary injunction against the rule Oct 6. She wrote in her ruling that "the rule of law is essential to our constitutional system of government and it applies equally to law enforcement officers and to other citizens."

After dedicating 700 hours of pro bono work to the case, Munger Tolles was thrilled with the outcome. Davis-Denny said protesters are now able to stand still for more than five seconds, and Abdullah's job is no longer affected by the rule.

Davis-Denny said the outcome of the suit was not only a testament to Munger Tolles' dedication to efficient pro bono work but it also highlights the firm's passion for allowing its younger attorneys to take on large projects. Clancy was integral in finding the suit, and a team of associates also played a key role in handling the investigation into members of the local police force in the suit.

"It goes back to how we got involved in the beginning — an interesting aspect of this case is the role that younger attorneys at our firm play," Davis-Denny said. "Our newest colleagues are given significant opportunities and responsibilities, including conducting high profile investigations, in the earliest stages of their careers."

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