

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JUAN LOPERA, ET AL

PLAINTIFFS,

vs.

TOWN OF COVENTRY, ET AL,

DEFENDANTS.

C.A. No. 08-123S

DEFENDANTS'¹ MOTION FOR SUMMARY JUDGMENT

NOW COME DEFENDANTS, Town of Coventry, by and through its Treasurer, Warren West, Kevin P. Harris, Kevin Kennedy, David Nelson, Stephen A. Michailides, Brian O'Rourke and Ronald E. DaSilva and hereby move for the entry of summary judgment. In support thereof, defendants rely upon the Memorandum of Law and Statement of Undisputed Facts, attached and incorporated herein.

Defendants,
By their attorney,

/s/ Marc DeSisto

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¹ The Defendants are the four Coventry Police Department officers who responded to the incident (

CERTIFICATION OF SERVICE

I hereby certify that the within document has been electronically filed with the Court on this 10th day of March, 2009 and is available for viewing and downloading from the ECF system. Service on the counsel of record, as listed below, will be effectuated by electronic means.

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/s/ Marc DeSisto

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**DEFENDANTS'¹ MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

The Plaintiffs in the instant case are members of the Central Falls High School boys' soccer team. They have brought suit against the Town of Coventry and Coventry police officers stemming from an incident that occurred after their interscholastic high school game against the Coventry High School boys' soccer team. After the plaintiffs' soccer coach, Robert Marchand, had informed the officers that his players were the "prime suspects" and that he had searched them for the allegedly stolen contraband, the Coach consented to the officers also conducting a search of the students. Coach Marchand agreed to the search in order to keep the peace and prove the team's innocence. Plaintiffs now claim that the police officers violated their rights by searching the plaintiffs and that their actions were racially motivated.

Defendants move for summary judgment and submit that not only did Coach Marchand's consent satisfy due process considerations but that they are nevertheless protected by the doctrine of qualified immunity from the instant suit. More specifically, a reasonable officer would not believe that relying on the coach's consent, who was acting in *loco parentis* to the players, violated plaintiffs' clearly established right. In addition, there is no evidence to support

the conclusion that the officers possessed any discriminatory intent or animus. Accordingly, summary judgment in favor of defendants on all counts should enter.

II. STATEMENT OF FACTS

The facts pertinent to the instant motion are not in dispute. On September 28, 2006, the Central Falls High School's men's soccer team traveled to Coventry High School for a soccer game. At some point, some of the Central Falls players entered the High School, with permission, to use the restrooms. At the end of the game, members of the Coventry football team accused one of the plaintiffs of stealing electronic equipment (ipod and cell phone) from the locker room located near the restrooms. These football players first approached the Central Falls soccer coach, Robert Marchand, as the coach was leaving the field. *Deposition of Robert Marchand, (January 6, 2009), at 18-19 (hereinafter "Marchand Tr.") (Attached Exhibit A)*. The plaintiffs were in the parking lot getting their bus when the Coventry students approached the coach on the field. Coach Marchand responded by telling the Coventry players "let's get to the bottom of this" and leading them to the Central Falls bus. *Id. at 19*. Coach Marchand made the Coventry players stop a short distance from the bus and then, with the help of his assistant coach, went on the bus and searched the plaintiffs' equipment. *Id. at 21-22*. During his deposition, Coach Marchand explained that he had been present during a prior incident between different rivaling schools in a similar circumstance where the students got out of control resulting in a "brawl". *Id. at 13-15*. Coach Marchand thus thought it was best and safer for all involved to try to quickly diffuse the situation by searching his players himself. *Id.*

After searching all the players' bags, Coach Marchand determined that plaintiffs were not involved in the alleged theft. When Coach Marchand exited the bus to advise the Coventry

¹ The Defendants are the four Coventry Police Department officers who responded to the incident (Kevin P. Harris,

students that he had found nothing, he discovered that the Coventry Athletic Director had arrived and that the group of less than 20 students had grown. Coach Marchand spoke directly with the Athletic Director and advised him that he had searched the players and was satisfied that they were not involved in the theft. *Id.* at 15 & 23. Coach Marchand offered to let the Coventry Athletic Director search the players himself but the AD immediately declined. *Id.* at 24. According to Coach Marchand, by this time the group of spectators surrounding the bus had grown to approximately 50 people (students and adults) with the spectators making various comments about not trusting the coach and insisting that the plaintiffs were involved in the theft. *Id.* at 24.

Just as Coach Marchand was relaying the results of his search to Coventry's AD, the Coventry police pulled into the parking lot with lights on. The Coventry Police Department had received two (2) calls for a disturbance and a possible fight in the parking lot between the two teams. Four (4) officers quickly responded, the Defendants Kevin P. Harris, Kevin Kennedy, David Nelson, and Stephen A. Michailides. Upon the officers' arrival, the Coventry's AD and Coach Marchand quickly brought them up to speed on what was going on and assured them that there was not a fight, yet. Coach Marchand, in particular, informed the officers that there had been a theft in the school and that his players, the plaintiffs, were the "prime suspects." *Marchand Tr.*, at 27. While the officers were speaking with Coach Marchand, a number of spectators kept yelling things at the Coach and plaintiffs who were still on the bus. The officers repeatedly told the spectators to quiet down and that the officers would take care of things. *Id.* at 27.

Kevin Kennedy, David Nelson, and Stephen A. Michailides), the Treasurer of the Town (Warren West), former Chief of Police for the Town of Coventry, Brian O'Rourke and current Chief of Police, Ronald E. DaSilva.

According to Coach Marchand, after he informed the officers that the plaintiffs were the prime suspects but that he conducted a search and was satisfied that they were not involved, there was “a pregnant pause” where the officers were obviously trying to figure out what to do next. *Marchand Tr.*, at 27. One of officers then asked if the Coach would allow the officers to also conduct a search. Coach Marchand readily agreed believing that it was best to have his players names cleared and to leave the area for the safety of the plaintiffs.² *Id.* at 28. Under questioning by plaintiffs’ attorney, Coach Marchand later testified that although he probably would not have allowed the officers to search his students if they were alone, given the escalating situation with the spectators and his obligation to protect the plaintiffs, he thought it would be best “take the high road” and allow the officers to search them in order to clear their names. *Id.* at 28 & 44-45. Although plaintiffs’ attorney asked the Coach if he felt he was under “duress” in giving this consent, the Coach explained that the duress was the result of the crowd surrounding the bus and the uncertainty of how they would react. *Id.* at 44-45. Sergeant Michailides testified that if the coach had not consented or if the students had protested, they would not have conducted the search. *Deposition of Stephen Michailides (December 18, 2008)*, at 47 (*hereinafter* “*Michailides Tr.*”).

Coach Marchand then instructed his players to allow the officers to look through their bags. For officer safety, the officers had the players step outside the bus and conducted a search by looking into their respective bags and having the students turn out their pockets. *Id.* at 48-49. None of the plaintiffs were frisked or otherwise touched during the search. The officers completed their search and did not find the missing items. The officers then advised the Coach

² Although not material for purposes of the instant motion, the officers testified that they did not ask for consent to search. Rather, it was Coach Marchand who offered to allow the officers to search the students. *Michailides Tr.*, at 44.

that they would escort the Central Falls' bus from the school in order to ensure their safety.

Marchand Tr., at 31-32.

Although plaintiffs allege that they were subject to racial and ethnic slurs from the opposing team and the Coventry bystanders, the plaintiffs did not report these slurs to the defendants that day. Although the officers heard the Coventry spectators yelling accusations of theft at the Central Falls players, the officers themselves never heard any racial slurs against the plaintiffs. *Michailides Tr., at 41; Deposition of David Nelson (December 17, 2008), at 45.*

Plaintiffs do not allege that the defendant officers used racial or ethnic slurs against the students. In fact, according to Coach Marchand the officers were courteous and professional "at all times" and repeatedly told the bystanders to quiet down. *Marchand Tr., at 26, 27 and 32.*

III. STANDARD OF REVIEW

Under the Federal Rules of Civil Procedure, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Fed.R.Civ.P. 56(c)*. It is axiomatic that this Court must view the evidence in the light most favorable to the nonmoving party. *Morrissey v. Boston Five Cents Savings Bank, F.S.B., 54 F.3d 27, 31 (1st Cir. 1995)*. However, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleadings, but . . . must set forth the specific facts showing that there is a genuine issue for trial." *Fed.R.Civ.P. 56(e)*. "A fact is 'material' if it potentially could affect the suit's outcome. An issue concerning such a fact is 'genuine' if a reasonable fact finder, examining the evidence and drawing all reasonable inferences helpful to the party resisting summary judgment, could resolve the dispute

in that party's favor." *Cortes-Iriszarry v. Corporacion Insular DeSeguros*, 111 F.3d 184, 187 (1st Cir. 1997) (citations omitted).

Accordingly, the purpose of summary judgment is to permit the court "to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required" on the claims being examined. *Wynne v. Tufts Univ. School of Medicine*, 976 F.2d 791, 793-94 (1st Cir. 1992) cert. denied 113 S.Ct. 1845 (1993). The mandates of Rule 56(c) requires entry of summary judgment "upon motion against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

"Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986)). Pursuant to Fed. R. Civ. P. 56(e):

[W]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. (Emphasis added).

Based upon the foregoing, the United States Supreme Court observed that the above two sentences of Rule 56 (e) were added "to disapprove a line of cases allowing a party opposing summary judgment to resist a properly made motion by reference only to its pleadings." *Celotex Corp.*, 477 U.S. at 3254, 106 S.Ct. at 2554. "[T]he plaintiff must present affirmative evidence in

order to defeat a properly supported motion for summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S. Ct. 2505, 2514 (1986).

“[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Id.* At 250, 106 S.Ct. at 2511. “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 250-51, 106 S. Ct. at 2511. As the Court recognized:

[n]or are judges any longer required to submit a question to a jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such character that it would warrant the jury in finding a verdict in favor of that party. Formerly it was held that if there was what is called a scintilla of evidence in support of a case the judge was bound to leave it to the jury, but recent decisions of high authority have established a more reasonable rule, that in every case, before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed. *Id.* at 251, 106 S.Ct. at 2511 (*emphasis in original*).

Accordingly, “[t]he mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252, 106 S.Ct. at 2512.

IV. ARGUMENT

Plaintiffs have brought a plethora of state and federal claims against the defendants including § 1983 claims for the alleged violation of plaintiffs’ due process and equal protection rights. Plaintiffs have also brought state law claims for invasion of privacy and claims under R.I.’s Racial Profiling Act, *R.I.G.L. § 31-21.2* and the State’s statute against ethnic intimidation, *R.I.G.L. § 9-1-35*.

Defendants submit that the defendants are entitled to summary judgment on plaintiffs’ claims not only because the undisputed facts fail to support the finding of a constitutional

deprivation but also because they enjoy qualified immunity from both the federal and state law claims.

A. *It was reasonable for the officers to rely upon Coach Marchand's Consent to search plaintiffs*

Defendants submit that summary judgment should enter in the first instance because the undisputed facts fail to support a finding that they violated plaintiffs' constitutional rights against unreasonable search or seizure. As the Court is aware, under Fourth Amendment jurisprudence, there is a general proscription against warrantless searches. *U.S. Const. amend. IV*.³ However, "one of the specifically established exceptions to the [Fourth Amendment] requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." *Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *U.S. v. Vilches-Navarrete*, 523 F.3d 1, 15 (1st Cir. 2008).

In this case, there is no dispute that when the officers arrived on the scene, plaintiffs' coach informed them that his players were the "prime suspects" in the theft and that the coach had searched the players but did not find the stolen items. *Marchand Tr.*, at 27. The coach also unequivocally testified that he readily agreed to the officer's request that they be allowed to search the plaintiffs themselves because he thought it was the best thing to do – to take the "high road" and clear their names. *Id.* at 28. Coach Marchand was also complimentary of the officers' professionalism and does not allege that the officers elicited this consent as a result of threat or duress.⁴ The only outstanding question therefore is whether the coach had authority to consent on behalf of the plaintiffs. Defendants submit that he did and, in any event because it is not

³ The Fourth Amendment specifically provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *U.S. Const. amend. IV*

⁴ The "duress" elicited from plaintiffs' attorney during Coach Marchand's deposition was as a result of the crowd of spectators not anything the officers said or did. *Marchand Tr.*, at 44-45.

clearly established that he lacked such authority, it was thus reasonable for the officers to believe that the coach, acting “in loco parentis” for the student players had authority to consent on their behalf.

“[T]here can be no Fourth Amendment violation if a police officer reasonably believed that a third party had authority to consent.” *U.S. v. McCurdy*, 480 F. Supp. 2d 380, 385-86 (D. Me. 2007). In this case, the plaintiffs were students of Central Falls High School and were participating in a school sponsored athletic event. Under settled jurisprudence, school officials are said to act *in loco parentis* to their students. “Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination They are subject . . . to the control of their parents or guardians. When parents place minor children in private schools for their education, the teachers and administrators of those schools stand *in loco parentis* over the children entrusted to them.” *Morse v. Frederick*, 551 U.S. 393 (U.S. 2007) quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654, 655, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995) (citation omitted)).

Acting *in loco parentis*, Coach Marchand thus had authority to consent on behalf of the students. *Vernonia Sch. Dist. 47J*, 515 U.S. at 654. In fact, in this case, Coach Marchand himself recognized his role *in loco parentis* by indicating repeatedly during his deposition that his main concern during this entire incident was the safety of his players. *Marchand Tr.*, at 13-15, 28. He decided on a course of action that he thought was best for his players. Accordingly, defendants submit that not only did the coach have authority to grant permission to search the students, it was reasonable for the officers to believe that the coach had the authority to consent. *McCurdy*, 480 F. Supp. 2d at 385-86. As such, plaintiffs’ § 1983 claim for the alleged violation

of plaintiffs' Fourth Amendment rights must fail and summary judgment in favor of defendants should enter.

B. The Doctrine of Qualified Immunity Protects Defendants from the Instant Suit

Defendants further submit that even if it is determined that the coach did not have authority to consent to the search of his student, the defendants are nevertheless are entitled to qualified immunity from the instant suit. The doctrine of qualified immunity emanates from the Supreme Court's pronouncements in Harlow v. Fitzgerald 457 U.S. 800, 818 (1982), where the Court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald 457 U.S. 800, 818 (1982). The purpose behind granting officials such immunity is to allow them to perform their duties and act in areas where clearly established rights are not implicated "with independence and without fear of consequence." Id. at 819. Officials, therefore, enjoy "an immunity from suit rather than a mere defense to liability [which] . . . is effectively lost if a case is erroneously permitted to go to trial." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

The Court applies a good faith test that allows questions of qualified immunity to be decided as a matter of law in appropriate cases. Malachowski v. City of Keene, 787 F.2d 704, 714 (1st Cir. 1986). Applying Saucier v. Katz, 533 U.S. 194, 201 (2001), the First Circuit has traditionally instructed that qualified immunity claims are evaluated under a three-part test:

"First, whether, [t]aken in the light most favorable to the party asserting the injury, . . . the facts . . . show the [defendant's] conduct violated a constitutional right. If so, the second question is whether that constitutional right was clearly established at the time of the . . . violation. The third question is whether a reasonable [defendant], similarly situated, would understand that the challenged conduct violated the clearly established right at issue."

Borges Colon v. Roman-Abreu, 438 F.3d 1, 18-19 (1st Cir. 2006) (internal citations and quotations omitted). However, the Supreme Court has recently amended this test and found that Courts “should exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis [as outlined in *Saucier*] should be addressed first in light of the circumstances in the particular case at hand.” *Pearson v. Callahan*, 129 S.Ct. 808, ___, 2009 U.S. LEXIS 591, **22 (2009) modifying *Saucier v. Katz*, 533 U.S. 194 (2001) (courts do not need to abide by the strict two-step sequence for resolving government officials’ qualified immunity claims). Thus, in addressing defendants’ claim of qualified immunity, the Court does not need to first determine whether a constitutional right has been violated.

Nevertheless, in general, this test boils down to viewing the official's actions from an objectively reasonable standpoint. The decisive question becomes whether another police officer, standing in the shoes of these defendants, would have concluded that their actions violated a clearly established statutory or constitutional right. *See Ricci v. Urso*, 974 F.2d 5, 7 (1st Cir. 1992). When addressing claims for qualified immunity on summary judgment motions, the Court must grant summary judgment if the plaintiff fails to generate a trialworthy issue by undermining the evidence supporting the defendant's objectively reasonable belief that his actions were lawful. *Dean v. Worcester*, 924 F.2d 364, 367 (1st Cir. 1991).

Defendants submit that the instant case is ripe for the grant of qualified immunity. As more fully outlined above, there is ample case law to support the conclusion that the coach was acting *in loco parentis* for the students. This is because a parent “may . . . delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.”

Vernonia Sch. Dist. 47J, 515 U.S. at 655 (quoting 1 William Blackstone, Blackstone's Commentaries on the Laws of England 441 (1769)) (emphasis added). Cf. *Hampton v. Oktibbeha County Sheriff Dep't*, 480 F.3d 358, 362 (5th Cir. Miss. 2007) ("Teachers and school administrators, it is said, act in loco parentis loco parentis in their dealings with students" *The Director* "was considered the youth's custodian during the relevant time period" and thus was justified in seeking to see the warrant before relinquishing the child to the officer's custody). As such, even if it is determined that the coach lacked the authority to consent to the search, it was not clearly established that he could not consent on behalf of the players.

A "reasonable, although mistaken, conclusion about the lawfulness of one's conduct does not subject a government official to personal liability." *Cookish v. Powell*, 945 F.2d 441, 443 (1st Cir. 1991). Thus, "[q]ualified immunity may exist even though in hindsight a court might determine that the action of the official violated the constitution." *Berthiaume v. Caron*, 142 F.3d 12, 15 (1st Cir. 1998) citing *Harlow*, 457 U.S. at 814-15. The First Circuit has observed that the "qualified immunity standard 'gives ample room for mistaken judgments' by protecting' all but the plainly incompetent or those who knowingly violate the law.'" *Rivera v. Murphy*, 979 F.2d 259, 263 (1st Cir. 1992) quoting *Hunter v. Bryant*, 502 U.S. 224, 229 (1991).

In the instant case, the officers clearly do not fall within the category of being "plainly incompetent or knowingly violating the law." It is simply not "clearly established" that a coach does not possess authority to consent on behalf of his student players. In fact, in this case, the coach himself believed he had the authority and particularly felt he was making the right decision given the unruly crowd to quickly clear his players of suspicion. Simply put, a reasonable officer in the place of these officers would not have believed that their actions infringed upon plaintiffs' clearly established rights. As such, the defendants are entitled to

summary judgment.

C. *The Coach's consent likewise defeats Plaintiffs' state law claim for Invasion of Privacy*

In Count 4 plaintiffs also seek to maintain a state law claim for invasion of privacy under *R.I.G.L. § 9-1-28.1*. Defendants submit that the defeat of plaintiffs' Fourth Amendment claims likewise results in the defeat of plaintiffs' invasion of privacy claim. As held by this Court, *§ 9-1-28.1* "confers a cause of action only for unreasonable invasions of privacy and does not impose liability for constitutionally permissible searches by government officials." *Brousseau v. Town of Westerly*, 11 F.Supp. 2d 177 (D.R.I. 1998) (Torres, J.). Because the search of the students was supported by the Coach's consent, the search was constitutionally firm and thus plaintiffs' claim for invasion of privacy must likewise fail.

In addition, even if the Court were to conclude that there is insufficient basis to support a finding that the officers conducted a constitutionally permissible search, similar to the qualified immunity granted to the officers from the Fourth Amendment claim, the defendants are likewise entitled to qualified immunity from plaintiff's invasion of privacy claim. *See Hatch*, 311 F.3d 83, 90 (1st Cir. 2002) citing *Pontbriand v. Sundlun*, 699 A.2d 856, 867 (R.I. 1997) and *Ensey v. Culhane*, 727 A.2d 687, 690 (R.I. 1999). Although the Rhode Island Supreme Court has never specifically afforded officials qualified immunity to protect against state law claims, as noted by the First Circuit, "*Pontbriand* and *Ensey* reflect Rhode Island's recognition of a qualified immunity defense under state law analogous to the federal doctrine established by the United States Supreme Court in *Harlow*, 457 U.S. at 818, cited with approval in both Rhode Island decisions, and routinely applied in § 1983 cases." *Hatch*, 311 F.3d at 90.

Thus, defendants submit that it is abundantly clear that the qualified immunity defense protects the defendants from plaintiff's state law claims just as it does from plaintiff's federal

constitutional claims. More precisely, without using the benefit of twenty/twenty hindsight, *Berthiaume v. Caron*, 142 F.3d 12, 15 (1st Cir. 1998), the officers' action are viewed from an objective standpoint, in light of the information available to the officers and with recognition that officers must make quick decisions in the heat of stressful situations. In this case, a reasonable officer would not believe that receiving the consent of the Coach to search the players violated plaintiffs' constitutional rights or was an invasion of their privacy. Accordingly, summary judgment on Count 4 should also enter in favor of defendants.

D. The Undisputed Facts Fail To Support Finding That Officers Violated Plaintiffs' Equal Protection Rights

In Count 2, plaintiffs seek to recover pursuant to § 1983 for the alleged denial of plaintiffs' right to equal protection. Plaintiffs premise their equal protection claim on the accusation that the police officers treated them differently because of their race. However, in making this allegation, plaintiffs can point to nothing other than the difference in their race, to support the contention that the *officers* possessed such discriminatory animus. As such, summary judgment in favor of defendants should enter.

By way of background, the Equal Protection Clause of the Fourteenth Amendment provides, in part, that "no State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws." *U.S. Const. amend. XIV*. Plaintiffs essentially maintain that the officers engaged in racial profiling in their decisions to request permission to search the plaintiffs. In order to succeed on such a claim, plaintiffs "must present evidence that [they were] treated differently from similarly situated white [individuals] and the action taken against him was motivated, at least in part, by his race." *Flowers v. Fiore*, 239 F.Supp.2d 173, 178 (D.R.I. 2003). *See also Reese v. Jefferson School District No. 14J*, 208 F.3d 736, 740 (9th Cir. 2000)(in order to succeed on claim, litigant must prove that the police acted in

a discriminatory manner and that the discrimination was intentional). This has been broken down into two inquiries: (1) whether the appellant was treated differently than others similarly situated, and (2) whether such a difference was based on an impermissible consideration, such as race. *Macone v. Town of Wakefield*, 277 F.3d 1, 10 (1st Cir. 2002)(*citations omitted*).

In the instant case, plaintiff fails to satisfy either element. In the first instance, there is no basis to support the allegation that plaintiffs were treated differently than similarly situated individuals. Regardless of plaintiffs' race, the officers arrived in response to a call that students were fighting. When the officers arrived, the students were not fighting but tensions were clearly running high with approximately 50 spectators forming a semi-circle around the bus and yelling things at the coach and AD. The first person to speak to the officers was the plaintiffs' coach who informed the officers that the plaintiffs, his own players, were the "prime suspects." *Marchand Tr.*, at 27. Coach Marchand also informed the officers that he had searched the plaintiffs' belongings and did not find the stolen items and had been just offering to let the Coventry AD conduct the search. In response, the officers allegedly requested permission for them to search these students. There is nothing to suggest that the officers would not have asked permission to search the players if they had been white and identified as the "prime suspects." Plaintiffs may attempt to point to the fact that the spectators surrounding plaintiffs' bus were not asked to undergo a search for the stolen items, however, these individuals were not similarly situated to plaintiffs in that they had not been identified as the "prime suspects" but rather were identified as the victims. Consequently, plaintiffs cannot offer any evidence to support the conclusion that the officers would have treated white individuals differently in a similar circumstance.

Plaintiff likewise fails to meet the second prong of an equal protection claim by proving that the action taken against him was motivated by their race. *Macone*, 277 F.3d at 10 (1st Cir. 2002). Rather, the facts plaintiffs rely on to support these claim are meager and do not suffice to meet this standard. Essentially, the facts to support plaintiffs' claim are that:

1. they are members of a minority group;
2. defendants are Caucasian; and
3. Plaintiffs committed no crime.

To avoid summary judgment, plaintiffs "must produce evidence sufficient to permit a reasonable trier of fact to find by a preponderance of the evidence that [the] decision was racially motivated." *Keyser v. Sacramento City Unified School District*, 265 F.3d 741, 754 (9th Cir. 2001). "A long line of Supreme Court cases makes clear that the Equal Protection Clause requires proof of discriminatory intent or motive." *Navarro v. Block*, 72 F.3d 712, 716 (9th Cir. 1995); *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 53 (1st Cir.1990)(plaintiff "may not prevail simply by asserting an inequity and tacking on the self-serving conclusion that the defendant was motivated by discriminatory animus"). In support of the same, "the facts alleged must 'specifically identify the particular instance(s) of discriminatory treatment and, as a logical exercise, adequately support the thesis that the discrimination was unlawful.'" *Judge v. City of Lowell*, 160 F.3d 67, 77 (1st Cir. 1998)

The racial differential between plaintiffs and the defendant officers is not sufficient to create the inference of discriminatory intent or motive. *Id.*; *Flowers*, 239 F.Supp.2d at 178. In *Judge*, for example, the plaintiff brought a § 1983 equal protection claim against city police officers and the medical examiner alleging that they failed to properly investigate the circumstances of her brother's death. The basis for the plaintiff's claim in that case was that the

defendants failed to take certain actions such as notifying her of her brother's death solely because she was black. *Id.* at 77. The plaintiff, however, offered no other evidence to support these allegations. The First Circuit concluded that such "mere conclusory assertion[s]" that the defendant's actions were racially motivated is not sufficient to maintain an equal protection claim. *Id.* This District Court, Judge Torres, has likewise dismissed an equal protection claim where the only evidence of discriminatory motive was the fact that the plaintiff was black and the officers were white. *See Flowers*, 239 F.Supp.2d at 177 (no evidence to support conclusion that the officers detained plaintiff because of his race).

In this case, although plaintiffs may be able to present evidence that racial and prejudicial statements were being made by the spectators around the bus, as well as possibly by Coventry soccer team during the game, there is absolutely no evidence that the officers themselves engaged in this type of talk or otherwise exhibited any discriminatory motive. In fact, the undisputed evidence is that the officers were courteous and professional "at all times" and instructed the spectators to quiet down. *Marchand Tr.*, at 26, 27 and 32.

Perhaps the best evidence of the complete dearth of discriminatory animus by the officers is Coach Marchand's actions. There is absolutely no indication or even an insinuation that Coach Marchand discriminated against these students or possessed any racial bias. Yet the officers took the exact same approach as Coach Marchand did. That is, they sought to quickly resolve the situation by asking for permission to search the players. Coach Marchand testified that he felt it was safer for all involved to quickly get to the bottom of the accusations by conducting the search and clearing his players. *Marchand Tr.*, at 28. There was nothing discriminatory in Coach Marchand's approach and thus there is likewise nothing discriminatory

in the officers' decision to follow a similar course by asking for consent to search.

Consequently, summary judgment in favor of defendants on Count II should enter.

E. There is no evidence of discriminatory animus to support a finding that the defendants violated Rhode Island's Racial Prevention Act or the Racial/National Origin Intimidation Statute

In Counts 5 and 6 plaintiffs seeks to maintain a claim for the alleged violation of Rhode Island's Racial Prevention Act and the Racial/National Origin Intimidation Statute. Defendants submit that the same reasoning that support the entry of summary judgment on plaintiffs' federal Equal Protection claim likewise supports the entry of summary judgment on these state law claims.

The Racial Prevention Act, in pertinent part, bans racial profiling by state or municipal law enforcement officers. *R.I.G.L. § 31-21.2-3*. "Racial profiling" is defined as "the detention, interdiction or other disparate treatment of an individual on the basis, in whole or in part, of the racial or ethnic status of such individual, except when such status is used in combination with other identifying factors seeking to apprehend a specific suspect whose racial or ethnic status is part of the description of the suspect, which description is timely and reliable." *Id.* *R.I.G.L. § 31-21.2-3*. The Racial/National Origin Intimidation Statute meanwhile allows for a cause of action when an individual maliciously subjects another "to an act or acts which would reasonably be construed as intended to harass or intimidate the person because of his or her race. . ."

R.I.G.L. § 9-1-35 (emphasis added).

As evident from the face of both these statutes, discriminatory animus is the touchstone to proving a cause of action under either of these statutes. Similar to the utter lack of any evidence to support a finding that the officers possessed discriminatory animus in support of plaintiffs' equal protection claim, the lack of discriminatory animus by the officers supports the

entry of summary judgment on plaintiff's claim under the Racial Prevention Act and the Racial/National Origin Intimidation Statute.

V. CONCLUSION

For all the reasons cited herein as well as those that may be raised at hearing, defendants respectfully submit that summary judgment on all counts should enter in favor of defendants.

Defendants,
By their attorney,

/s/ Marc DeSisto

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CERTIFICATION OF SERVICE

I hereby certify that the within document has been electronically filed with the Court on this 10th day of March, 2009 and is available for viewing and downloading from the ECF system. Service on the counsel of record, as listed below, will be effectuated by electronic means.

Stephen M. Robinson, Esq. srobinson@smrobinsonlaw.com

Vicki J. Behma, Esq. vbejma@smrobinsonlaw.com

/s/ Marc DeSisto

EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Juan Lopera, Marlon Giraldo, Mauricio Expinal, Hector Cardona, Marlon Giraldo, Steven Giraldo, William Ruiz, Predro Hernandez, Luis E. Ardila-Lazaro, by and through his parents and next friends, Luis Ardila and Hziel Ardila; Brian Ocampo, by and through his parent and next friend, Alba Jaramillo; Stephen Patino, by and through his parent and next friend, Lilian Giraldo; Joulдер. Salazar, by and through his parents and next friends Youlдер Salazar and Martha Duran; Milton Ricuarte, Jr, by and through his parents and next friends, Milton Ricuarte Sr and Elizabeth Rivera,

Plaintiffs,

vs. C.A. No.8-123S

TOWN OF COVENTRY, by and through its Treasurer, Warren West; Kevin P. Harris, in his individual capacity and in his capacity as police officer for the Town of Coventry, Kevin Kennedy, in his individual capacity and in his capacity as a police officer for the Town of Coventry, David Nelson, in his individual capacity and in his capacity as a police officer for the Town of Coventry, Stephen A. Michailides, in his individual capacity and in his capacity as a police officer for the Town of Coventry; and Brian O'Rourke, individually and in his capacity as the former Chief of Police for the Town of Coventry, and Ronald E. DaSilva, individually and in his capacity as Chief of Police for the Town of Coventry,

Defendants.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Juan Lopez, Marlon Giraldo, Mauricio Espina, Hector Cardona, Marlon Giraldo, Steven Giraldo, William Ruiz, Pedro Hernandez, Luis E. Ardiola-Lazaro, by and through his parents and next friends, Luis Ardiola and Hziel Ardiola, Brian Ocampo, by and through his parent and next friend, Alba Jaranylo, Stephen Parino, by and through his parent and next friend, Lillian Giraldo, Joulder Salazar, by and through his parents and next friends, Yulder Salazar and Martha Duran, Milton Ricuarte, Jr. by and through his parents and next friends, Milton Ricuarte Sr and Elizabeth Rivera,

Plaintiffs,

vs. C.A. No.8-123S

TOWN OF COVENTRY, by and through its Treasurer, Warren West, Kevin P. Harris, in his individual capacity and in his capacity as police officer for the town of Coventry, Kevin Kennedy, in his individual capacity and in his capacity as a police officer for the town of Coventry, David Nelson, in his individual capacity and in his capacity as a police officer for the town of Coventry, Stephen A. Michalides, in his individual capacity and in his capacity as a police officer for the town of Coventry, and Brian O'Rourke, individually and in his capacity as the former Chief of Police for the town of Coventry, and Ronald E. Basilio, individually and in his capacity as Chief of Police for the town of Coventry,

Defendants.

AFFILIATED COURT REPORTERS (401) 246-0520

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WITNESS
ROBERT "BOBBY" MARCHAND

INDEX

DIRECT EXAMINATION BY MR. DESISTO 4
CROSS EXAMINATION BY MS. THOMPSON 40
REDIRECT EXAMINATION BY MR. DESISTO 48

EXHIBITS

A Letter October 12, 2006 from Kenneth DiPietro to Coventry Police Department 12

AFFILIATED COURT REPORTERS (401) 246-0520

1
2
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DEPOSITION of ROBERT CHARLES MARCHAND, Coach
Central Falls High School Soccer Team, taken in the
above-entitled cause on behalf of the Defendants,
pursuant to notice, before Patricia M Aloisio, Notary
Public in and for the State of Rhode Island, at the
DeSisto Law office, 211 Angell Street, Providence, Rhode
Island on January 6, 2009 at 2:30 p.m.

APPEARANCES:

FOR THE PLAINTIFF:
THE LAW OFFICES OF STEPHEN M. ROBINSON
BY: MELISSA THOMPSON, ESQ.

FOR THE DEFENDANT
DE SISTO LAW
BY: MARC DESISTO, ESQ.

AFFILIATED COURT REPORTERS (401) 246-0520

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ROBERT CHARLES MARCHAND

Being duly sworn, deposes and testifies in the following manner:

EXAMINATION BY MR. DESISTO

Q Could I have your full name for the record.
A Robert Charles Marchand.
Q And, Mr. Marchand, I am Marc DeSisto, and I represent the defendants in the case of Ocampo, et al versus Coventry. You're familiar with that case?
A Yes, I am.
Q Where do you live?
A I live in Narragansett.
Q I don't perceive that we're going to have to subpoena you, but do you have a problem giving your address?
A Oh no. 65 Lake View Drive, Narragansett, Rhode Island 02882.
Q And who do you live with?
A My wife.
Q Have you ever been deposed before?
A Yes.
Q How many times?
A I think this is my third one.

AFFILIATED COURT REPORTERS (401) 246-0520

1 Q Do you know Ken DiPietro?
 2 A I met him at that meeting and a few other times
 3 later.
 4 Q The meeting we're talking about is that October 5th
 5 meeting between the Interscholastic League --
 6 Interscholastic League, and people from Coventry, and
 7 people from Central Falls.
 8 Q And is anything that he's written in this letter
 9 inaccurate to your memory?
 10 A No, pretty much this covers the topics and what was
 11 said.
 12 Q And the reason I ask is he mentions that when the
 13 police arrived you indicated to them or you agreed
 14 that they could search the bags of the students. Is
 15 that accurate?
 16 A Well, the bottom line was that. The decision that
 17 had to be made at that particular time was that I had
 18 quick flash back. Almost ten years to the day we
 19 went to Burrillville High School with cheerleaders
 20 and whatever and it turned into a massive brawl from
 21 fans, cheerleaders were attacked, we had a major
 22 brawl.
 23 Q At a soccer game?
 24 A At a soccer game, the same kind of conditions, the

AFFILIATED COURT REPORTERS (401) 246-0520

1 search?
 2 A Yes, to avoid physical conflict and physical harm on
 3 anybody's part.
 4 Q Now, we've been talking about this, but you did
 5 consent to the search, that's obvious?
 6 A Yes, I did.
 7 Q And in what manner did you consent to the search, how
 8 did it come about?
 9 A Well, we had conducted, my assistant coach and I had
 10 conducted a search. We searched everything so we
 11 knew we didn't have it. I went out, the athletic
 12 director was waiting, I said, listen we don't have
 13 anything. If you want you can do it. He's going no,
 14 no, no. All of a sudden sirens come out of no where
 15 and police cars came out of no where, maybe three,
 16 maybe four. And man they were coming in, they jumped
 17 out of their cars, and everybody was really stunned
 18 there for a while until later on we found out that
 19 somebody had made a call saying that there was a
 20 fight going on, so they thought that they were
 21 responding to a Code Blue here, or red, or whatever
 22 it is and they came in just like that. Things calmed
 23 down a little bit, everybody got explained what was
 24 going down. While we were doing that, comments were

AFFILIATED COURT REPORTERS (401) 246-0520

1 field isolated from the school, from phones, at that
 2 time we didn't even have cells I don't think, okay,
 3 and anyway it was a massive scene and I didn't want
 4 that repeated. So I debated it for a couple of
 5 seconds and I said, no we cannot openly challenge
 6 this, this crowd might become hostile, we're out
 7 numbered, it's better to acquiesce than to, than to
 8 push it at the time.
 9 Q To make this easier, is it a fair statement to say
 10 that you thought it would be best to eliminate your
 11 boys as suspects so that you can get out on the road
 12 and get out of there --
 13 A That was part of it, but my thing was the --
 14 MR. DESISTO: You've got to let me
 15 finish.
 16 THE WITNESS: I'm sorry. I thought you
 17 were.
 18 MR. DESISTO: That's all right.
 19 Q -- so you thought it was best to eliminate your boys
 20 as suspects so that you could get on the road and get
 21 out of there and that's why you consented to the
 22 search?
 23 A That was part of it.
 24 Q Was there any other reason that you consented to the

AFFILIATED COURT REPORTERS (401) 246-0520

1 being made from the crowd, you know, they're good at
 2 hiding things, they're sneaky you know it, search the
 3 coach. So at each time somebody in authority would
 4 tell them stop, but everybody just stayed in the same
 5 spot. So we were in, everybody was in kind of
 6 hearing range okay. So anyway they're talking and
 7 they going on and on, Jesus and I could see it in
 8 their face and then once again --
 9 Q You mean the police were talking --
 10 A Yeah, well how are we going to do this, we got to get
 11 this, you know, they wanted to take my word for it,
 12 everybody was in a -- a hot place at that particular
 13 right at that moment decisions had to be made, okay.
 14 So finally they asked me if I would give my
 15 permission for them to search. So I guess that was
 16 their first approach seeing if the coach would agree
 17 to it which I did which we just talked about.
 18 Q And I just want to. In other words, a police officer
 19 came to you and said would you consent to the search
 20 or would you agree to have your students searched?
 21 A Yeah, one of the police officers asked me.
 22 Q You don't know which one that is?
 23 A No.
 24 Q And when he asked you, you had a decision to make and

AFFILIATED COURT REPORTERS (401) 246-0520

1 you said yes, go ahead.
 2 A Yes, I did.
 3 Q Now before the police arrived, how did it come
 4 about -- well, let me just ask it this way:
 5 Q What happened before the police arrived after the
 6 game?
 7 A Okay. We went to play there, we had a very good team
 8 that year. They had, they were O and 8 and right
 9 from the beginning our boys like we could tell that
 10 they were underestimating opponents. Well, we played
 11 the game, Coventry scores with 7 seconds left to tie
 12 us costing us 2 valuable points. If you win you get
 13 3, if you tie you get 1. Believe me that was the
 14 only thing on my mind and the other coach. So we --
 15 it's very isolated so we just sat them down there and
 16 we had proceeded to rake them out every which way.
 17 Q Let me just stop you for a minute. You proceeded to
 18 rake out your team?
 19 A Oh yes.
 20 Q In other words, you failed here?
 21 A That's right, and since we're here let's talk about
 22 it, because blah, blah, blah. So finally as we have
 23 the same rituals all the time, line up by 2's, don't
 24 talk to anybody, we walk straight to the field to the

1 A Yeah, came from the showers.
 2 Q All boys then?
 3 A Yes.
 4 Q I'm going to ask you this not that you know, probably
 5 football players?
 6 A It turned out to be football players. I didn't know
 7 that at the time.
 8 Q But the soccer players had already gone into the
 9 locker room?
 10 A Either that or their parents had picked them up.
 11 Q Now when they say that to you, what do you do?
 12 A I said, we're going to get to the bottom of this, you
 13 need to get in back of me, follow me, okay, everybody
 14 needs to shut up now, I heard it, okay I got it. So
 15 we walk. Before we got to the bus, I stop them. I
 16 said, okay you need to wait here.
 17 Q Were there any other people around the bus when you
 18 got there besides these 20 kids in back of you?
 19 A Yes, there was all of this time there was cars coming
 20 and going, people coming out. I guess we played the
 21 game that day, the football team was practicing that
 22 day, the cheerleaders were practicing that day, the
 23 cross country team, and all the doors are right there
 24 that's how big, and then there was I guess a majority

1 bus, we do it every game. So we did it as I did,
 2 coach do it, and they did it and I was just moping
 3 and crying in my beer kind of thing and so I was
 4 taking my time, the team was way in front of me. As
 5 I'm walking off the field there's a group of about 20
 6 kids all seemed to be wearing jeans and a T shirt and
 7 all have wet hair. So are you the, are you the F'n
 8 coach of Central Falls. Yes, I am. Well, your punks
 9 stole all of our F'n shit and they got our ipods and
 10 ba-boo, ba-boo everybody is talking at once. You
 11 know, stop right here.
 12 Q Yes, so now you stop right here for a minute.
 13 A Yes, I will.
 14 MR. DESISTO: This is great because I get
 15 to tell a coach what to do and you have to
 16 listen.
 17 (laughter)
 18 Q All students?
 19 A Yes.
 20 Q About 20 of them?
 21 A Yeah, about.
 22 Q Now you say that they were in jeans and T shirts and
 23 wet hair meaning they probably were in the locker
 24 room?

1 of parents coming in and out picking up these various
 2 athletes.
 3 Q But no one was around the bus just to be around the
 4 bus?
 5 A No, no, no, no there was no congregation of anybody
 6 then that was milling.
 7 Q So these 20 kids are behind you, you get up to the
 8 bus and what do you do?
 9 A I go in the bus, everybody is just sitting there, and
 10 they're sitting there doing exactly what we told
 11 them, keep your mouth shut and keep your head down
 12 because this is embarrassing. So I call the coach
 13 over, I says, I don't know what's happening here but
 14 all these guys a lot of shit got stolen and they
 15 think we did it.
 16 Q And when you say you called the coach over, it's your
 17 assistant coach?
 18 A Yes.
 19 Q And what's his name?
 20 A Carl Africo.
 21 Q Right, okay. There's a bus driver on the bus?
 22 A Yes.
 23 Q What's his name?
 24 A I don't know.

1 Q Not the usual bus driver?
 2 A Well, we have different bus drivers. I know most of
 3 them. It was a male bus driver. That's all I can
 4 remember.
 5 Q Not someone you would know?
 6 A No, as Bob the bus driver, no.
 7 Q So now you're on the bus?
 8 A Yes. So I call him over. I said, they're saying a
 9 lot of stuff just got stolen in there they think we
 10 did it. So you go to the back of the bus okay and
 11 just follow my lead. He goes in the back to the bus.
 12 I said, listen everybody needs to put their game bag,
 13 varsity bag and their book bags, most people took
 14 their book bags with them because when we got back to
 15 school the school is closed on their laps. And we
 16 went and we started.
 17 Q Now before we get to that and bear with me, I'm not
 18 going to be too much longer.
 19 A No problem.
 20 Q When you got on that bus, only the students from
 21 Coventry were behind you, no athletic director or no
 22 coach from the other team?
 23 A Not at that time.
 24 Q You get on the bus, you make a decision I'm going to

1 ones that's suppose to build up the reputation and
 2 make sure that when we bring people out we're suppose
 3 to act the way we're suppose to.
 4 Q You were satisfied after the search that the items
 5 weren't with your kids or on that bus?
 6 A Oh completely satisfied.
 7 Q And how long did that search take?
 8 A It took a while. I would have to say 20, 25 minutes.
 9 Q As you're searching, are you looking outside?
 10 A No, I'm not looking outside. When I got out it was a
 11 surprise in what I saw.
 12 Q So now the search is done.
 13 A Yes.
 14 Q What's the next thing you do?
 15 A Well, the next thing I do is I get off the bus and I
 16 notice the first person I see is the AD who's
 17 standing there. One of the things about the
 18 Interscholastic rules there has to be somebody that's
 19 in charge. So this one was the AD, sometimes it's a
 20 vice principal. So he's standing there. So by this
 21 time he gets wind of what the accusations are and
 22 everything so he's looking at me. I says, hey we
 23 just, we checked everything, we don't have it. It is
 24 not us, and if you want, you can do the same thing

1 get to the bottom of this by searching my own
 2 players; right?
 3 A That's exactly it.
 4 Q Now do you announce to the players we're going to
 5 search them?
 6 A No, they didn't know. We didn't say a word.
 7 Q So go ahead.
 8 A So I started in the front, open your bag, open your
 9 zips, get there, okay, hands in, hands in the cleats,
 10 book bag, book bag, going like this, because they
 11 said money was stolen. We did it all. Then where it
 12 came up what's the ipod, that's mine. Okay you can
 13 proof that; right. Yup. Okay. Keep it out. So we
 14 went a while doing this and we were almost done, and
 15 finally, Coach, what's happening. I said, somebody
 16 has accused us of stealing some stuff and we're
 17 checking it out to make sure it's not us. So we
 18 completed it, went in the medicine kit, went in the
 19 bandaid boxes, went in the ball bags.
 20 Q Would you say you did a thorough search?
 21 A We -- thorough, I think I did a Columbo search, you
 22 know, CSI. Okay as far as we checked everything
 23 because I took this very serious right away. The
 24 reputation of our city is not there. I'm one of the

1 because the bags are still there. He's in the
 2 starting of, no, I don't think that'll be necessary,
 3 but the crowd is now, now there is a crowd, now there
 4 are other people standing there.
 5 Q How many? I know it's tough to estimate.
 6 A You know, you know I would have to say at the height
 7 of it it was about 50, 60 people and I don't think
 8 anybody that came didn't leave during this thing. So
 9 anybody that came and somebody said hey guess what,
 10 they got the suspects -- I don't know what they were
 11 saying, okay, but all right I'll get chronological.
 12 Q So now the AD you said to him, if you want to search
 13 go ahead?
 14 A Yeah. So he goes no.
 15 Q And what is the crowd saying or doing at this time?
 16 A Oh, I get him to do that and they're saying they know
 17 we did this, okay, that we're from the ghetto, they
 18 know how to hide things, did you check the coach
 19 maybe he's got it in his bags. Okay. A couple of
 20 just those kinds of things, those people know how to
 21 lie good and they know how to hide it so you can't
 22 trust them.
 23 Q Now are the comments coming from students or are
 24 there adults making them?

1 A They were mostly adults voices. Now and, you know,
 2 I'm sure there were student voices there too, okay
 3 because they were very vocal, the football team was
 4 very vocal, okay so I'm sure that the word -- well,
 5 I'm not sure because I wasn't there -- but the word
 6 got out this is why they got them, and we got them
 7 here, and they ain't leaving til we find the stuff
 8 and catch these ghetto rats. You know, so.
 9 Q You've asked the AD now do you want to search?
 10 A Right, and we're in the process, he's going no, but
 11 he's in the process of figuring out how the hell am I
 12 going to satisfy all constituencies here, and that's
 13 when the cops came in and took it out.
 14 Q And you begin to worry about there might be a
 15 mallei --
 16 A Yes.
 17 Q -- or a brawl?
 18 A Yes.
 19 Q And at that point the police come in?
 20 A Police come in, yeah.
 21 Q How many police officers or cars first of all?
 22 A I would have to say 3 or 4. I think it was 4.
 23 Q Four cars?
 24 A It was definitely three, at least three, yeah. They

1 explained to them what it really is, there was a
 2 theft, there was a theft in the school, we were prime
 3 suspects, I had searched the bus, we didn't find
 4 anything. AD says the coach was just telling me that
 5 when you guys came in. Every so often the crowd was
 6 listening to this, because I said somebody would say
 7 something, somebody would turn around, all right, you
 8 people need to be quiet, we're going to settle this,
 9 blah, blah.
 10 Q This is the police saying this?
 11 A The police did it, the AD did it, okay, they took
 12 their best shot.
 13 Q And how far away was the crowd?
 14 A Oh close. You know, the crowd was there and we were
 15 standing right over here. (indicating)
 16 Q 10 yards?
 17 A 10, 15, yeah. Yeah, within ear shot.
 18 Q Did the police ask you for your consent to search or
 19 did you bring it up?
 20 A No, I did not bring it up. Then it was this pregnant
 21 pause of okay what are we going to do. Okay.
 22 Q You mean --
 23 A Everybody, you know, and I'm saying what am I going
 24 to do, what are they going to do to us. It was this

1 came from every direction that they must have a plan,
 2 you know, and they executed it very well, because
 3 they all came in coordinated urrrr shhhh and then they
 4 looked quick, because I think they were looking at --
 5 later they told us we got a report that a full scale
 6 fight was going on here. When they got out they saw
 7 everybody, my kids were still on the bus, okay, so
 8 there was nothing going on and we told them that
 9 right away, de-escalate the thing here, you know, you
 10 don't have to do anything.
 11 Q And did they?
 12 A Oh very much so.
 13 Q Did you find that the officers were professional?
 14 A At all times.
 15 Q How about the AD, was he professional?
 16 A At all times.
 17 Q And when I say professional, the officers were
 18 courteous?
 19 A Yes.
 20 Q And not demeaning at all?
 21 A No.
 22 Q When they arrive and after you tell them there's no
 23 fight, what's the next thing that happens?
 24 A Well, then we explain to them, both the AD and I

1 thing there we got a situation and how best to get
 2 out of it. So the cops decided, obviously the cops
 3 decided their best thing was to search themselves to
 4 appease the masses over there that were crying for
 5 our heads. Okay.
 6 Q I say to eliminate you as suspects. Is that fair?
 7 A Yes.
 8 Q So do they say to you, do you give your consent, can
 9 we search?
 10 A Yeah, we'd like to search everybody okay, you know,
 11 and like I said I previously thought about it safety
 12 first, we didn't do it, take the high road, take the
 13 safe road, yes, you can.
 14 Q And what's the next thing that happens?
 15 A So the next thing, how you going to do this. So the
 16 cops say, okay everybody is going to come off the bus
 17 with everything that they got, the managers are going
 18 to come with all the equipment stuff, and they're all
 19 going to line up. That's what we did. Everybody was
 20 told to put the bags in between their legs and to
 21 wait for further instructions.
 22 Q In between their legs on the ground?
 23 A Yeah, yes.
 24 Q And, again, you've already said that the officers

1 were at all times courteous; right?
 2 A Yes.
 3 Q Were they still being courteous?
 4 A Yes.
 5 Q And did they yell at the boys at all?
 6 A Not at all.
 7 Q And then what happens?
 8 A So they look and then a couple of them pull out the
 9 gloves and they put on the gloves and whoever the
 10 nearest kid was, I think there was two, two stations
 11 I guess and I guess most of it took place on the hood
 12 of the car, take your bag, put it on the hood, the
 13 copy would go in and search. So one of the things
 14 that I thought was very degrading though was, you
 15 know, although we come from the poorest community
 16 some kids have ipods, some kids have whatever the
 17 machinery was at the time, so whenever they found
 18 one, they would wave to the crowd, okay, is this
 19 anybody's and they walked up and down and was showing
 20 the thing and is this anybody's, each time nobody
 21 said anything kuz it wasn't theirs, returned back to
 22 the individual player, you pass the test, you go
 23 stand over there with your bags. Next customer.
 24 Q Did you observe the officers to touch the soccer

1 think the frustration of the crowd grew when I guess
 2 when they came, they came, they had to start coming
 3 to the realization here that maybe they didn't catch
 4 us red handed as they thought they did.
 5 Q Now, you say the crowd grew to about 50 people?
 6 A I would say that, yeah.
 7 Q And when the search was done, how did the boys get
 8 back on the bus? Were they told to get back on?
 9 A Well, you know, you done officers? Yes, they are.
 10 All right. Managers, and we always do the same
 11 thing, managers go put the equipment in the front of
 12 the bus because it's easy for them, everybody else
 13 marched on to the bus and sat down.
 14 Q Did the officers approach the crowd and say, look we
 15 searched, go home?
 16 A No.
 17 Q Do you know what the officers did after searching the
 18 boys?
 19 A Yeah, they told us that they were going to put a cop
 20 car in the front of the bus and a cop car in the back
 21 of the bus and they were going to escort us out of
 22 town.
 23 Q Were they still courteous to you professional?
 24 A Yes.

1 players?
 2 A You know I can't, I think they padded them down, but
 3 I'm not sure.
 4 MR. DESISTO: Okay, that's a reasonable
 5 answer.
 6 THE WITNESS: Yeah.
 7 Q Nothing sticks out in your mind?
 8 A No.
 9 Q You think they did, but you can't remember?
 10 A No, by that time I was in this oh my God what is
 11 happening, make sure, you know, I did tell myself try
 12 to make sure you remember everything because this is
 13 coming down, this is not going to stop here.
 14 Q How long did the searching take?
 15 A It took a while. To me it was about an hour.
 16 Q And did the crowd remain for that hour?
 17 A Oh yes, they did. I think it grew, because this
 18 thing was fueled a lot by cell phones, one the cell
 19 phone that somebody used to report this phony fight
 20 and then some of my players saw them after, people
 21 were taking pictures of this line up here, they were
 22 calling like get your ass down here right away
 23 because you won't believe what's happening over here.
 24 So I think a couple, it grew right there okay and I

1 Q Professional?
 2 A Yes.
 3 Q And is that what happened?
 4 A Yes. We got out of town.
 5 Q When the boys were being searched by the police --
 6 I've already asked you this, I'm asking it again --
 7 were the police demeaning to the boys in any way?
 8 A No.
 9 Q And when you got back on the bus, did you have a talk
 10 with your players?
 11 A By that time it was me, the talk that we had was
 12 between me and the coach. You know, like Bobby, what
 13 was that. I said, Jesus I don't know. I said, but,
 14 you know, what do you think, Coach, do you think I
 15 did the right thing. You know, I said, you know,
 16 because I, believe me, look at me, I'm a First
 17 Amended guy, you're getting no, you know, and I dread
 18 to say, screw you get a search warrant and I debated
 19 that. Okay. Then I said, no, that's not my role, at
 20 that point my role as the coach, I'm suppose to be
 21 the father, I'm suppose to take them home safe. So
 22 he's kind of like saying, I'm saying, oof I said,
 23 we've got to call the people in the morning, you
 24 know, the principal and everything you know; but we

1 Q Do you think that you were in a position of being
 2 able to hear the police communicate with the AD and
 3 the on lookers?
 4 A Yes.
 5 Q Did you hear the police communicate with the on
 6 lookers about what it is that the items, the stolen
 7 items were?
 8 A No, I never heard the police do that. I think the AD
 9 informed them of the accusations.
 10 Q The AD informed the police of the accusations?
 11 A Yes.
 12 Q Did you overhear the police requesting how it is
 13 these allegations came to light and what evidence
 14 existed?
 15 A No.
 16 Q So to your knowledge there was no evidence of an
 17 individual seeing a person from the Central Falls
 18 team take these items?
 19 A No. You mean did somebody say I seen this guy, no.
 20 Q Did the police seek your opinion about where to
 21 conduct the search of the students?
 22 A No, they did not.
 23 Q Were you on a large bus or a small school bus?
 24 A A large school bus, yellow school bus.

1 A 10 minutes.
 2 Q Now you may have testified to this, but did you
 3 inform them that you had already conducted a search
 4 or did they ask you, the police?
 5 A Oh I think I did as far as, yeah, I did because the
 6 AD and I were explaining to the cops and I told them
 7 I just finished a search and just talking to the AD
 8 about it when you guys came on the scene.
 9 Q I think you said that the AD had accepted your word
 10 and had declined searching the students himself?
 11 A He definitely declined to conduct his own search.
 12 Q Did you feel that the police accepted your search as
 13 valid, did they accept it as well?
 14 A I'm not sure. I'm not sure.
 15 Q Do you recall how the, how the police cars were
 16 positioned in relation to the school bus?
 17 A Yes. There was one on like in the front in the back
 18 and one kind of like on the side and that's where I
 19 lose it if there was three or four cop cars. There
 20 could have been one doing the same thing in the front
 21 there, but I'm not sure.
 22 Q With the police cars positioned as they were, could
 23 the bus have left and traveled away?
 24 A Not without the police cars moving.

1 Q Full size?
 2 A Yes.
 3 Q How many individuals were on the bus students and
 4 staff?
 5 A Okay I would have to say we usually carry 18 players,
 6 2 coaches, and I think we had 3 managers. So it was
 7 approximately like what's that 23, 24 people.
 8 Q Do you recall was there enough room for there to be
 9 one student per seat on the bus?
 10 A No, there was quite a few doubled up, but there was
 11 empty seats that we put all the equipment on and some
 12 people had their own seat.
 13 Q When you searched the players on the bus, did you
 14 feel like you had enough room on the bus to conduct
 15 the search?
 16 A Oh definitely.
 17 Q Did you overhear the police communicate or have a
 18 discussion about ever moving the bus or moving the
 19 students away from the crowd?
 20 A No, that was never discussed at all.
 21 Q From the point the police arrived to the time when
 22 they asked you if they could conduct a search of the
 23 students, about how long would you say that time
 24 period was?

1 Q I'm not sure if it was in your testimony, but I have
 2 listened to your statements on the Dan York show and
 3 do you recall on that show at least if not prior in
 4 your testimony stating that you acquiesced to the
 5 search?
 6 A Yes.
 7 Q In your mind, does that differ from consenting?
 8 A Under duress, yes, under duress I think it does do it
 9 plus I think I was trying to use a big word on the,
 10 you know, for my public.
 11 Q Is it a fair statement to say that when you were
 12 asked whether the police could search your soccer
 13 team that you felt under duress to say yes?
 14 A Yes.
 15 Q Why did you feel under duress?
 16 A Well, I felt under duress one was that, you know,
 17 they really didn't have any right to do it straight
 18 up, that they didn't take our word for it, that it
 19 did seem that even the authorities at some point had
 20 in their mind questioning, you know, did they really
 21 do it, is it sneaky. It was under duress because I
 22 would have taken another action had there not been a
 23 crowd there and potential violence. So all of that
 24 things lead me to under duress.

1 Q If there had not been a crowd there, what action
 2 would you have taken that you're referring to?
 3 A I would have said, we have done it, I've conducted
 4 the search, we are clean, and what are you going to
 5 do about it and then I would of taken it from there.
 6 Q Did you witness the police physically moving back the
 7 crowd at any point?
 8 A No, they never did. They just turned, them and the
 9 AD just turned, all right cut it out. You know, it
 10 was one of those things where you tell the class okay
 11 you cut it out and you don't really do anything and
 12 then two seconds later they're talking again, you
 13 know.
 14 Q Going to the crowd, you stated that you heard them
 15 use the phrases such as ghetto rats and --
 16 A No, they didn't use ghetto rats. I paraphrased that
 17 as a thing. No, you know they do it, you know the
 18 kind, you know that they're, you know, doing it and
 19 all that referring. Okay.
 20 Q Do you recall hearing specifically any racial slurs?
 21 A None that I heard. My players claim that they heard
 22 some.
 23 Q Did you yourself ever hear anyone during that
 24 incident refer to the students -- excuse me, but as

1 economic background and because of the unbelievable
 2 negative publicity that has constantly come out of
 3 Central Falls and the negativity that most people, a
 4 sense negative thoughts that most people think of
 5 when they hear about people from Central Falls, you
 6 know, knowing that we had, that we were taking out of
 7 a jewel of the city the boys soccer team, ambassadors
 8 of the city. We had just gone there, we had done
 9 everything that the league and the rules are suppose
 10 to say we're suppose to do, we didn't like tieing, we
 11 were disgusted by it, but we shook their hand and
 12 told them good game, we were ready to get in and go
 13 back and go back to our own house.
 14 Q Do you recall telling Tatiana Pina that that day was
 15 the worse day of the boys lives?
 16 A I might of said something like that.
 17 Q Was it also offensive to you that spectators were
 18 taking photos of the incident?
 19 A Oh definitely, felt on display, cheapened.
 20 Q Were you yourself searched by the police?
 21 A No, I was not.
 22 Q Do you know if any of your staff was searched?
 23 A No, he was not. Neither was the bus driver.
 24 MS. THOMPSON: Okay. I have nothing

1 Spics?
 2 A No, not that I heard.
 3 MS. THOMPSON: Sorry, give me a second.
 4 Q Did you say anything to the crowd after the search
 5 was completed?
 6 A Yes, before I got on the bus I turned around and I
 7 said, okay is everybody satisfied, okay, are you
 8 satisfied that it wasn't us, okay somebody stole,
 9 somebody from you stole from you so you better look,
 10 you better look at yourselves before the next time
 11 you accuse other people and then I got on the bus.
 12 Q Do you feel that your students were accused because
 13 of their race?
 14 MR. DESISTO: Objection, but go ahead.
 15 A A big part of it, yes, but not solely, not total
 16 motivation, but a big part of it was, yes.
 17 Q What would other motivations be?
 18 A That they were the opposite team, okay, you know,
 19 opponent. I guess that's about it.
 20 Q Were you personally offended during the incident
 21 about the way the search was conducted?
 22 A Very much so.
 23 Q What about it offended you specifically?
 24 A The whole rush to judgment, the whole because of our

1 further.
 2 MR. DESISTO: I just have three
 3 questions.
 4
 5 REDIRECT EXAMINATION BY MR. DeSISTO
 6 Q You indicated that you were under duress when you
 7 allowed the search. I take it that a large part of
 8 that was the duress was due to your worrying about
 9 what was going to happen and you thought this was the
 10 best way to do it.
 11 A That was part of it.
 12 Q Under the circumstances?
 13 A That was part of it.
 14 Q And when you were personally offended by what
 15 happened, I just want to ensure it wasn't because of
 16 the way the police acted towards you or the players,
 17 they were courteous to you and the players; correct?
 18 A Yes.
 19 Q You were personally offended by the whole
 20 circumstances of what happened?
 21 A The crowd and the kinds of actions of a typical
 22 bigoted crowd. I mean if you want to say well how
 23 would a typical bigoted crowd act.
 24 Q That was it?