



**Office of Professional Responsibility
Civil Rights & Force Investigations Division**

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January 2, 2003

CONFIDENTIAL MEMORANDUM

TO: Chief of Police

THRU: Assistant Chief of Police *JNSP*
Office of Professional Responsibility *SKW*

SUBJECT: Third Update Relative to Complaints of Alleged Misconduct made at the October 24, 2002, Hearing of the Committee on the Judiciary of the Council of the District of Columbia Concerning the IMF/World Bank Protests

This memorandum updates the December 17, 2002 summary of the investigative activity of the Metropolitan Police Department as it relates to Complaints of Alleged Misconduct made at the October 24, 2002, Hearing of the Committee on the Judiciary of the Council of the District of Columbia Concerning the IMF/World Bank Protests.

Chronology of Reporting

October 24, 2002 - Hearing of the Committee on the Judiciary of the Council of the District of Columbia. Three complainants testify before the Committee alleging improper activity.

November 6, 2002 – MPD Legislative Liaison Monique Lebeach forwards summary of hearing with complainant information to the Office of the Chief of Police

November 12, 2002 – Complaint received by the Office of Professional Responsibility, and assigned to the Civil Rights & Force Investigations Division for review.

November 12, 2002, Written response from the Chief of Police to the Mayor of the District of Columbia forwarded.

Listing of Complainants

This section contains the known list of complaints made regarding this incident.

Office of Civilian Complaint Review

The Office of Civilian Complaint Review has advised the MPD Office of Professional Responsibility that they are currently investigating three IMF/World Bank Protest related complaints. Those complainants are identified below:

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Shawna Michelle Bader:

Address: 1301 15th Street N.W. #202

Complainant states she was arrested in Pershing Square in relation to the IMF/World Bank protests. She complains of rude and unprofessional behavior by MPD officers. She also complained that she believed her arrest was illegal.

Bruce Friedman

Address: 4913 N. 17 Street Arlington, VA

Complainant reported that he was commuting by bicycle to work in the District from Arlington, Virginia. He complained that he entered Pershing Park and was prevented from leaving. Complainant was not arrested, but believes he was unlawfully detained.

Lynn Johnson

Address: 10 Castle Street Asheville, North Carolina 28803

Complainant reports that she was an IMF protestor and complained that after she was arrested, her handcuffs too tight, that she was detained on buses for 14-15 hours without adequate food or water, and that she was "wrongfully arrested while exercising her constitutional rights and freedom of speech."

Complaints Made During the October 24, 2002, City Council Hearings

The Office of Professional Responsibility has initiated an investigation concerning allegations made by three persons at the October 24, 2002, City Council Hearings. Those persons have been identified as:

Joseph Mayer

NOTE: ACLU Attorney Arthur Spitzer refused to provide MPD with the address or contact information of this complainant. He advised that all police contact with these complainants have to be made through him.

Complainant states he was arrested in Pershing Square in relation to the IMF/World Bank protests. The complainant reports that he went to Pershing Square on Pennsylvania Avenue along with his daughter. He claims that the police came into the park and did not allow anyone to leave.

Julie Abate

NOTE: ACLU Attorney Arthur Spitzer refused to provide MPD with the address or contact information of this complainant. He advised that all police contact with these complainants have to be made through him.

Complainant states she was arrested in Pershing Square in relation to the IMF/World Bank protests. Complainant reports that she went to Pershing Square out of curiosity and was not allowed to leave after the police moved in.

Michael Eichler

NOTE: ACLU Attorney Arthur Spitzer refused to provide MPD with the addresses and contact information of this complainant. He advised that all police contact with these complainants have to be made through him.

Complainant states he was arrested in Pershing Square in relation to the IMF/World Bank protests. Complainant reports that he arrived at the park on bicycle and was denied the opportunity to leave by the police. He also claims that at no point was he ordered to leave the park or move on.

All three claim that they were Flexi-cuffed behind their back, placed on a Metro bus, and transported to a detention facility.

Possible Class-Action Lawsuit filed by the American Civil Liberties Union, National Capital Area (ACLU-NCA)

Information was obtained from Mr. Ron Harris from the MPD Office of the General Counsel, as well as Mr. Jack Grimaldi of the D.C. Corporation Council's office, that the ACLU has indicated future plans to file a class action lawsuit on behalf of numerous persons arrested. However, as of this writing, no official lawsuit has been filed.

Members of the Civil Rights & Force Investigations Division have conferred with MPD's General Counsel, and will continue to interact with that office as the investigation progresses. It appears that the complainants who have filed with the OCCR, and the complainants who testified at the City Council Hearings are likely plaintiffs in that lawsuit.

Summary of Investigation

Investigators

Sergeant James McCoy and Sergeant James McGuire have been designated as the lead investigators for this incident. They are being supervised by Lieutenant Jacob Kishter and Captain Matthew Klein.

OCCR

The complainants who have filed allegations at the Office of Civilian Complaint Review will have their complaints addressed by that office. The Civil Rights & Force Investigations Division have contacted that office, and will maintain communication with OCCR representatives.

OGC

As noted above, the Civil Rights & Force Investigations Division will continue to confer with the Office of the General Counsel on an ongoing basis.

CRFID

The Civil Rights & Force Investigations Division has identified the three complainants who testified during the City Council Hearings as noted above. ACLU Attorney Arthur Spitzer is representing them. Force Investigation Team Investigators conferred with Mr. Spitzer, and have arranged for the interview of the complainants on November 27, 2002.

Police Department Members Interviewed

Inspector Joel Maupin

Inspector Joel Maupin is the Deputy Director of the Institute of Police Science (IPS). Inspector Maupin's was the command official in charge of the prisoner processing facility at the IPS during the IMF detail. The following is a synopsis of Inspector Maupin's tape-recorded statement provided to Sergeants James McCoy and James McGuire:

When asked about the prisoner processing procedures at the IPS, Inspector Maupin discussed the processing, detainment, release and/or transport to court. He stated that each prisoner was escorted from a transport bus through the front doors of the IPS. Every prisoner was

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photographed and finger printed and his or her arrest paperwork was completed. If there were no other charges pending then arrestees could elect to be released and pay collateral or receive a citation date to appear in court on a future date. If arrestees had outstanding warrants or other holding charges then they would in turn, be transported to court.

During detainment at IPS the arrestees were flexi-cuffed, strong hand to their opposite ankle with a flexi-cuff in between their hand and foot. Additionally, when asked about prisoners being handcuffed during processing, he stated that the prisoner's flexi-cuffs were removed during the processing procedures and were re-flexi-cuffed; one hand to one leg in front of their body once the processing was complete. As needed the prisoners flexi-cuffs were removed as they were escorted to use restroom facilities and to stretch.

Captain Cleora Sharkey

Captain Cleora Sharkey is the Operations Commander, Major Narcotics Branch. The following is a synopsis of Captain Sharkey's statement provided to Sergeants James McCoy and James McGuire:

Captain Sharkey related that she was one of the operations officials in charge of the Prisoner Processing facility. Captain Sharkey stated that she completed the plan and scheduled the personnel for the IMF detail. Captain Sharkey when asked if a briefing was given to the officials detailed to the IPS for prisoner processing, she replied that a briefing was given to discuss the operational plan.

When asked about the detainment procedures used while the arrestees were inside the gymnasium portion of the Institute of Police Science, Captain Sharkey stated that the arrestees were flexi-cuffed, strong hand to their opposite ankle with a flexi-cuff in between. Captain Sharkey related that the middle flexi-cuff was removed when the arrestees were escorted to the restroom. She further stated that it was necessary use this technique to handcuff prisoners because there was no holding facility and so the prisoners could not run freely. Additionally, she stated that there was no written policy in the IMF operational manual for handcuffing procedures at the processing facility.

Captain Sharkey when asked if there were any IT problems at the processing facility, she related that there was delay because the digital cameras could not handle the volume of prisoner photos taken. During the midnight tour of duty for the next day video cameras used to monitor the downtown area caused an overload to the electronic processing equipment and all the computers used for processing crashed. Additionally, due to updates at on September 28 at approximately 3:00 A.M., to the CJIS database, caused a delay in prisoner processing.

Captain Andrew Solberg

Captain Andrew Solberg is the Assistant District Commander at the Fourth District. The following is a synopsis of Captain Solberg's statement provided to Sergeants James McCoy and James McGuire:

Captain Solberg stated that he was assigned as the Fourth District CDU Commander for the IMF/World Bank demonstrations. At approximately 9:00 A.M. he and the Fourth District CDU Bike Platoon lead a group of demonstrators on bicycles from Union Station, through the downtown area to Pershing Square located at 15th and Pennsylvania, Avenue, Northwest. Captain Solberg related that once he arrived at Pershing Square he met with Assistant Chief

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Brian Jordan and Assistant Chief Peter Newsham and was instructed to take his CDU platoon and shut down the south and east sides of the park. He was informed that everyone inside Pershing Park would be arrested.

Captain Solberg when asked if he gave, heard, or had any knowledge of an order being given to the protestors in the park to disburse or move on that they would subjected to arrest he replied, "No". Assistant Chief Jordan told him that an order had been given earlier that morning to a group of people congregating in the intersection of 14th and Pennsylvania Avenue, Northwest. This order was given prior to Captain Solberg's arrival at Pershing Square at 9:00 A.M.

Lieutenant Jeffery Harold

Lieutenant Jeffery Harold, Special Operations Division. The following is a synopsis of Lieutenant Harold's statement provided to Sergeants James McCoy and James McGuire:

Lieutenant Harold when asked about past prisoner restraining practices stated that he had no knowledge of the origin of utilizing the technique of flexi-cuffing a prisoner's right wrist to their left ankle.

Lieutenant Harold when asked if he had knowledge of an order being given to the protestors at Pershing Park to disperse or be subjected to arrest stated that he was unaware that an order was given to the crowd prior to the mass arrest.

Assistant Chief Peter Newsham

Assistant Chief Peter Newsham is the Chief of the Office of Professional Responsibility. The following is a synopsis of Assistant Chief Jordan's statement provided to Executive Assistant Chief Michael Fitzgerald:

Assistant Chief Newsham when asked about his assignment during the IMF/World Bank demonstrations stated that he was responsible for the zone, which included Pershing Park. Assistant Chief Newsham related that hundreds of demonstrator's were coming from different directions of the city to Pershing Park. Assistant Chief Newsham related he personally observed demonstrators turn over newspaper boxes and ignoring officers orders to get out of the street and get onto the sidewalks.

Assistant Chief Newsham when asked if any warnings were given to the demonstrators prior to the mass arrest at Pershing Park stated that the conduct of the demonstrators was such that they were clearly violating traffic laws in a dangerous manner. Assistant Chief Newsham related that some of the demonstrators were warned by officers along their route to get onto the sidewalk and out of the street in which the demonstrators ignored the warnings.

Assistant Chief Newsham further stated that it was not practical to give everybody a warning or to make sure that everyone received a warning. Assistant Chief Newsham related that the demonstrators were arrested for disorderly conduct and failing to obey officers orders prior to entering Pershing Park.

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U.S. Park Police Captain Rick Murphy

USPP Captain Murphy allegedly refused to make arrests at Persing Park, because he believed it was unlawful. Captain Murphy has not been able to be interviewed, and the Force Investigation Team is actively trying to arrange such an interview.

Summation of Facts

The Civil Rights & Force Investigations Division has conducted a policy review of the preliminary facts as they relate to the department's arrest, transportation, and detention procedures used during the course of the IMF/World Bank protests. Specifically, investigators assessed the protocols used by police managers as they relate to prisoner processing during this incident. Investigators have reviewed the written procedures enumerated in the operational manual that were created and implemented by the Special Services Command during the IMF/World Bank demonstrations. The investigators also reviewed General Order 502.1 (Transporting Prisoners).

Facts gathered thus far indicate that on September 27, 2002, approximately four hundred protestors gathered at Pershing Park, located at 15th and Pennsylvania Avenue, Northwest. The protestors were encircled by members of the Metropolitan and Park Police Departments and were prohibited from exiting the park. Subsequently, the protestors were arrested for "Failure to obey a police order." However, there is no evidence that a verbal order was announced to the protestors that if they choose to remain in the park without a permit to demonstrate that they will be subject to arrest. An order was given to MPD Civil Disturbance managers to arrest every one in the park and transport them to the IPS for processing.

The complaint that an officer was rude to prisoners on their bus during transportation to the IPS was not investigated by the CRIFID and will be referred to the Special Services Division for investigation. Additionally, there were no findings of instances of use-of-force during prisoner transportation.

The Special Services Division's, IMF Operational Manual used during the World Bank protests does not include a written policy for prisoner handcuffing techniques while prisoners are detained at the IPS. When the IPS is designated as the prisoner processing facility during mass demonstrations it is common practice for arrestees to be flexi-cuffed, strong hand to their opposite ankle with a flexi-cuff in between. The middle flexi-cuff was removed when the arrestees were escorted to the restroom and while they were permitted to stand up and stretch. Prisoners are handcuffed using this technique because there are no holding cells to prevent prisoners from escaping or run freely about the gymnasium.

Preliminary Analyses and Assessment

The Force Investigation Team has conducted its preliminary investigation surrounding the complaints made by the three citizens who testified before the City Council on October 24, 2002. Their complaints, along with the pending complaints at the OCCR, focus on three areas; arrest, transportation, and detention.

Arrest

There are questions as they relate to the arrest of the complainants. There is no evidence to indicate that the arrestees at Persing Park were warned prior to their arrests.

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There are indications that protestors at other locations were warned earlier in the day at other locations, however, it is not clear which specific individuals had been warned.

There appears to be a failure to follow departmental procedure at the location of the Persing Park arrests. According to MPD's Mass Demonstration Handbook, at least two documented warnings prior to arrest must be made. Videotapes submitted by the plaintiffs, along with statements by police officials, indicate that no warnings were given.

Further, it appears that incorrect charges were placed on the defendants. At Persing Park, they were charged with Failure to Obey an Officer, which is a traffic charge. Further, the arrest paperwork at the Persing Park arrests appears inadequate, especially compared to arrests made at other locations.

Finally, it is noted that at least five persons were released on a Detention Journal, indicating an improper arrest.

It does not appear that these arrests were illegal, however, the execution of the arrests appears problematic.

Transportation

It does not appear that any unlawful acts occurred during the transport of prisoners, and that transportation procedures were followed. In one of the OCCR complaints, it appears that an unidentified officer who was on a bus during a transport from the scene to IPS used disparaging remarks about the University of Maryland (apparently the arrested person was a UM student, and the officer was a UM graduate. The officer allegedly stated he was embarrassed that the arrestee was from that University. Allegedly the officer made these statements in a demeaning way.

Detention

Persons who were arrested by the MPD were transported to the Institute of Police Science gymnasium for processing. Allegations were made by complainants that they were restrained improperly. The described the restraint as "hogtying." The preliminary review revealed that there was no inappropriate instances of *use-of-force* by members of the Metropolitan Police Department.

The investigation has revealed that there were hundreds of arrestees confined in the gymnasium, with no holding facilities. Police officials in charge of prisoner processing were concerned about officer safety and the possibility of escapes because of the large number of prisoners. It appears that a decision was made by Captain Cleora Sharkey to restrain the prisoners with flexicuffs strong arm to ankle. Inspector Joel Maupin apparently authorized this decision. Both these police officials indicated that prisoners could be un-restrained to use the restroom.

This decision appears to be sound, based on the circumstances faced by the officials. The situation was fluid and rapidly evolving, and a decision had to be made at that time. However, it is recommended that an operational plan be written to formally institutionalize future mass detentions at IPS (or any other location).

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Additionally, there were apparent computer-related delays that backed-up prisoner processes. Some prisoners may have been detained for up to 18 hours. These delays were not illegal, and were remedied as soon as practicable. The delays were not within the ability of the officials on the scene to correct.

Finally, the interpretation of the word "hogtying" is subjective, and it maintains a generally negative connotation. In common vernacular, "hogtying" is generally viewed as restraint of legs and arms together on some type of pole or device. This did not occur.

Please contact me if you have further questions.



Joshua A. Ederheimer
Inspector, Director

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