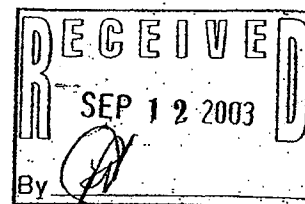




Office of Professional Responsibility
Civil Rights & Force Investigations Division



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January 25, 2003

CONFIDENTIAL MEMORANDUM

TO: Chief of Police

THRU: Acting Assistant Chief of Police
Office of Professional Responsibility

THRU: Director *[Signature]*
Civil Rights and Force Investigation Division

FROM: Commander
Force Investigation Team

SUBJECT: Report 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 addresses 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.

BACKGROUND

During the weekend of September 27th through the 29th, 2002, the World Bank and the International Monetary Fund (IMF) held their annual meetings at their headquarters located in downtown Washington, D.C. Intelligence gathered prior to the event, coupled with information disseminated to the media by protest group leaders, indicated that several groups sought to "shut down the city" by way of blocking major intersections leading into and around Washington. Moreover, a "Scavenger Hunt" was publicized via the Internet—a game of sorts that sought to reward participants with "points" for acts of vandalism throughout the city.

On Friday, September 27, 2002, approximately 400 International Monetary Fund (IMF)/World Bank protestors, who were part of a larger group of protesters, marched throughout downtown Washington, D.C. and finally gathered at Pershing Park, located at 15th and Pennsylvania Avenue, Northwest. Shortly thereafter, the demonstrators were encircled by members of the Metropolitan Police and United States Park Police Departments and were prohibited from exiting the park.

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MPD Assistant Chief Peter J. Newsham was responsible for Area IV of the World Bank/IMF demonstration detail, which encompassed the Pershing Park. While on the scene at Pershing Park, Assistant Chief Newsham gave an order to arrest the protesters for "Failure to obey a police order," based on his personal observations and discussions with several MPD Civil Disturbance Unit (CDU) command officials on the scene. Specifically, he observed the protestors violate traffic laws in a dangerous manner, turn over newspaper boxes, and ignore officers' orders to get out of the street and onto the sidewalks.

An order was given to Metropolitan Police Department Civil Disturbance Unit managers by Assistant Chief Newsham to arrest everyone in the park and transport them to the Institute of Police Science (IPS) for processing. Metro Buses were used to transport prisoners to the IPS.

Each prisoner was escorted from a transport bus through the front doors of the IPS. Every prisoner was photographed, fingerprinted, and his or her arrest paperwork was completed. In cases where no other charges were pending, arrestees could elect to be released and pay collateral or receive a citation date to appear in court at a later time. If arrestees had outstanding warrants or other holding charges, they were transported to court to appear before a judge.

During detainment at the IPS the arrestees sat on floor mats and were flexi-cuffed¹, strong hand wrist to opposite ankle, with a third flexi-cuff in-between their hand and foot. As needed, the prisoners' flexi-cuffs were removed as they were escorted to use restroom facilities and to stretch. The length of detainment varied, but in some cases lasted as long as eighteen (18) hours. (Photographs depicting the type of Flexi-cuffs utilized are attached to this report.)

The delay in prisoner processing was due to a temporary failure and scheduled unavailability of the information systems. The digital cameras that were used to take prisoner photographs functioned slowly because they could not handle the volume of pictures taken. The computer server used for prisoner processing crashed, and processing was delayed to trouble-shoot the problem. Moreover, routine updates to the Criminal Justice Information System (CJIS) database scheduled on Saturday, September 28, 2002, at approximately 3:00 A.M., caused additional delays. These delays were compounded by Prisoner Control's failure to immediately implement manual-backup procedures when the automated system became unavailable.

On October 24, 2002, three (3) complainants testified at the hearing of the Committee on the Judiciary of the Council of the District of Columbia. At that hearing, the complainants alleged that they were unlawfully arrested and detained for an unreasonable period of time. Furthermore, the individuals testified that they were "hogtied" while detained by the Metropolitan Police Department. The complaint was

¹ The Flexi-Cuffs consisted of three "loops"—one around the wrist of the strong hand, another around the opposite ankle, and an additional cuff between the two thereby extending the space between the arm and opposite leg.

received by the Office of Professional Responsibility, and assigned to the Civil Rights and Force Investigations Division, Force Investigation Team for investigation.

Metropolitan Police Department Members Interviewed

In order to further this examination, numerous MPD members were interviewed about their recollection of the events that took place in and around Pershing Park on the day in question. Only those members identified as having specific and relevant information about the events at the park were interviewed. The following is a summary of the statements given by each member.

Assistant Chief Peter Newsham

Assistant Chief Peter Newsham is in charge of the Office of Professional Responsibility. Assistant Chief Newsham explained that his assignment during the IMF/World Bank demonstrations on Friday, September 27, 2002, was Zone IV, which included Pershing Park. Assistant Chief Newsham related that hundreds of demonstrators were converging from different directions and moving toward Pershing Park. Assistant Chief Newsham related that he personally observed demonstrators turning over newspaper stands and ignoring officers' orders to get out of the street and onto the sidewalks.

Assistant Chief Newsham was asked if any warnings were given to the demonstrators prior to the mass arrest at Pershing Park, and replied 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, however the demonstrators ignored the warnings. Assistant Chief Newsham further explained that it was not practical to give everyone a warning or to make sure that every person received a warning at the point where all of the protesters converged at Pershing Park. Assistant Chief Newsham related that the demonstrators were arrested for disorderly conduct and failure to obey officer's orders for violations that occurred prior to their entering Pershing Park.

Chief Newsham was asked to describe Assistant Chief Brian Jordan's involvement on the scene of the arrests. Chief Newsham explained that he recalled seeing Chief Jordan on the scene; however, Chief Jordan was outside of his assigned zone and therefore made no command decisions relating to any operational issues.

Captain Andrew Solberg

Captain Andrew Solberg is an Assistant District Commander at the Fourth District. Captain Solberg stated that on September 27, 2002, he was assigned as the Fourth District CDU Commander for the IMF/World Bank demonstrations. At approximately 9:00 A.M., while in charge of the Fourth District CDU bicycle platoon, he monitored a group of demonstrators on bicycles from Union Station, through the downtown area to Pershing Park located at 15th and Pennsylvania, Avenue. The purpose for monitoring

this non-permitted movement was to ensure that all necessary traffic measures were taken both by the demonstrators and police.

Captain Solberg related that once he arrived at Pershing Park, he met with Assistant Chief Brian Jordan and Assistant Chief Peter Newsham. Captain Solberg explained that he was then instructed to position his CDU platoon in such away that it blocked off access to and from the south and east sides of the park. He was informed that everyone inside Pershing Park would be arrested. The parade was conducted without a permit, and in violation of Title 18 of the DCMR (Vehicles and Traffic).

Captain Solberg was asked if he gave, heard, or had any knowledge of an order being given to the protestors in the park to disperse, or that failing to do so would result in arrest. Captain Solberg replied that he did not. According to Captain Solberg, Assistant Chief Jordan relayed to 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 Park at 9:00 A.M.

Lieutenant Jeffery Harold

Lieutenant Jeffery Harold is assigned to the Special Operations Division. Lieutenant Harold was responsible for monitoring the activities of the protesters as well as MPD members and provide assistance and advice as needed. Lieutenant Harold stated that at one point, he was on the scene of the mass arrests at Pershing Park, and was asked if he had knowledge of an order being given to the protesters at the park to disperse or be subjected to arrest. Lieutenant Harold stated that he was unaware if an order was given to the crowd prior to the mass arrests. Lieutenant Harold further indicated that no permits were issued for any parades or marches, either in or around Pershing Park on that day for any of the groups in the area

United States Park Police Major Rick Murphy

The Force Investigation Team interviewed U.S. Park Police Major Rick Murphy via the telephone. Major Murphy was a Captain at the time of this incident, and has since been promoted and reassigned to duties in New York.

Major Murphy explained that he was on the scene at Pershing Park on September 27, 2002, and witnessed the group of protesters being contained within the park. Major Murphy further detailed a conversation he had with Assistant Chief Newsham in which, he in effect, told the chief that he would not arrest the protesters in the park.

Major Murphy indicated that the protesters' actions in the park did not meet the criteria for mass arrests based on U.S. Park Police protocols. He advised that in similar situations, the protesters would first be warned to disperse and then given ample time to do so. However, Major Murphy did indicate that he assisted MPD with positioning numerous Park Police officers around the park so as to prevent anyone from leaving. Major Murphy was interviewed via telephone because of his location in New York.

Inspector Joel Maupin

Inspector Joel Maupin is the Deputy Director of the Institute of Police Science (IPS). Inspector Maupin was the MPD command official in charge of the prisoner processing facility at the IPS during the IMF detail. When asked about the prisoner processing procedures at the IPS, Inspector Maupin discussed the processing, detainment, release and/or transport of arrestees to court. The inspector explained that each prisoner was escorted from a transport bus through the front doors of the IPS. Each prisoner was photographed, fingerprinted, and his or her arrest paperwork was completed. If there were no other charges pending, arrestees could elect to be released and either pay a collateral or receive a citation to appear in court on a future date. If arrestees had outstanding warrants or other holding charges, they were transported to court.

While detained at IPS, the arrestees were flexi-cuffed—strong hand wrist to their opposite ankle—with a flexi-cuff in-between their wrist and ankle. Additionally, when asked about prisoners being handcuffed during processing, he stated that the prisoners' flexi-cuffs were removed during the processing procedures and were re-flexi-cuffed; one wrist to the opposite ankle 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 periodically stretch.

Captain Cleora Sharkey

Captain Cleora Sharkey is the Operations Commander at the Major Narcotics Branch. Captain Sharkey related that she was one of the operations officials in charge of the prisoner processing facility. Captain Sharkey stated that she prepared the operational plan and scheduled the personnel for the IMF detail. Captain Sharkey was asked if a briefing was given to the officials detailed to the IPS for prisoner processing. She replied that a briefing was indeed given to discuss the operational plan. According to Captain Sharkey, several officials with prisoner control responsibilities were in attendance, although she could not recall exactly whom.

When asked about the detainment procedures used while the arrestees were inside the gymnasium portion of the Institute of Police Science, Captain Sharkey explained that the arrestees were flexi-cuffed, strong wrist 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 to use this technique to handcuff prisoners because there was no holding facility and this measure was taken so that prisoners could not run around freely. Additionally, she stated that there was no specific written policy in the IMF/World Bank operational manual for handcuffing procedures at the processing facility.

Captain Sharkey was asked if there were any Information Technology (IT) problems at the processing facility. She related that there was a delay because the digital cameras could not handle the volume of prisoner photos taken. She advised that the prisoner

processing computer server overloaded and "crashed" during the midnight tour of duty for the next day. Additionally, due to updates on September 28, at approximately 3:00 A.M. to the CJIS database, major delays to prisoner processing occurred.

Civilian Witnesses

The following witnesses testified at the October 24th, 2002 Hearing of the Committee on the Judiciary of the Council of the District of Columbia concerning the IMF/World Bank Protests. Extensive interviews were not conducted with these individuals due to pending litigation and the presence of counsel².

Statement of Mr. Joseph Mayer

Mr. Mayer stated that he was arrested in Pershing Square in relation to the IMF/World Bank protests. The complainant reported that he went to Pershing Square on Pennsylvania Avenue along with his daughter. Mr. Mayer explained that the police came into the park and did not allow anyone to leave. Mr. Mayer further related that he was subsequently handcuffed, placed on a bus, and driven to the police academy where he was later processed.

Mr. Mayer went on to describe how he was restrained during his detention. Once the bus arrived at the training academy, the handcuffs were moved from behind his back to the front so that his hands were now placed in front of him. Once at the academy, Mr. Mayer was allowed to use the restroom, and his handcuffs were removed until he was finished. Mr. Mayer further related that once inside the gymnasium, he was restrained and placed on a mat. Mr. Mayer described the restraining as having a wrist attached to his ankle, "short enough so that you couldn't stand up or stretch out if you were laying down."

Statement of Ms. Julie Abbate

Ms. Julie Abbate stated that she was arrested in Pershing Square in relation to the IMF/World Bank protests. Ms. Abbate further explained that she went to Pershing Square out of curiosity and was not allowed to leave the park after the police moved in. Ms. Abbate related that when she later realized that arrests were inevitable, she volunteered to be placed under arrest. Ms. Abbate explained that once arrested, she was moved onto a bus and transported to the police academy. Upon arrival at the academy, Ms. Abbate was photographed along with her arresting officer. Ms. Abbate related that when asked to pay the fifty-dollar fine, she refused and requested a citation because she was just a bystander and an attorney, and did not want a record of any sort.

² NOTE: ACLU Attorney Arthur Spitzer refused to provide MPD with the address or contact information of these complainants. He advised that all police contacts with these complainants have to be made through him.

Ms. Abbate explained that she was then moved to another processing line so that she could be accommodated and receive a citation date instead of paying the fine. However, she was first restrained and placed on a mat inside the gymnasium. Ms. Abbate related that she was told that once all of the prisoners that elected to pay the fine were processed, those electing for citation release would be processed immediately thereafter. Ms. Abbate further related that she later learned that she could not receive a citation as the courts were open for business at that time. Ms. Abbate was later transferred over to the District of Columbia Superior Court where she was turned over to the United States Marshals Service. Ms. Abbate described in detail the way she was thoroughly searched by the Marshals, including having to remove several articles of clothing in front of female Marshals and other inmates. Ms. Abbate stated that her case was eventually "no-papered."

Ms. Abbate was again asked to describe how she was restrained while inside of the gymnasium at the police academy. Ms. Abbate explained that in order to be "cuffed," one had to sit down on the floor because a "circle" was placed around the wrist, another placed "close to your ankle," and another connecting the two. Ms. Abbate further explained that the cuff around the ankle was placed loosely enough so that it could be moved up and down. Ms. Abbate related that the cuff was not placed so tightly so as to cut off circulation. According to Ms. Abbate, when she and other prisoners were allowed to use the restroom, the middle link would be cut in order to allow them to walk.

Statement of Mr. Michael Eichler

Mr. Michael Eichler stated that he was arrested in Pershing Park in relation to the IMF/World Bank protests. He further reported that he arrived at the park on a bicycle and that once he entered the park, he was denied the opportunity to leave by police. He also testified that at no point during his detainment in the park was he ordered to leave the area. Mr. Eichler stated that he was subsequently arrested and placed on a Metro bus. From there, Mr. Eichler was transported to the training academy where he explained that he was detained on the bus for several hours awaiting processing. Mr. Eichler explained that he was later photographed and fingerprinted, then placed on a mat inside of the gymnasium. According to Mr. Eichler, a "zip" was placed around his wrist, another around his ankle, and one in between the two. According to Mr. Eichler, the middle "zip" between the arm and ankle was removed when prisoners were escorted to the restroom. Mr. Eichler further described the restraints as follows: "It would move, it wasn't so tight that it could not move, but I could not move it past my calf or ankle." Mr. Eichler was asked whether he was able to stand while in the restraints, and replied that, "I could actually stand, but I could not stand erect, probably the closest I could get to upright would have been maybe at my back at ninety degrees." Mr. Eichler related that he was detained for approximately fifteen hours.

All three complainants explained that on the day in question, they were prevented from leaving the park, placed under arrest and subsequently transported to the Institute of Police Science for processing. While at the IPS, they were restrained by having one of

their wrists flexi-cuffed to an opposite ankle. All three complainants related that they were fed during their detention, given restroom breaks, and had room to move as the flexi-cuffs were not placed so tightly so as to cut off circulation or remain fixed in one place.

Video and Photographs

Members assigned to the prisoner processing detail at the IPS took still digital photographs of the detention area in the gymnasium. The photos depict the detainment area along with the handcuffed prisoners. The photos further depict groups of prisoners flexi-cuffed—wrist to opposite ankle—sitting on blue mats on the gymnasium floor. Some prisoners are sitting upright and talking to other prisoners nearby. Other prisoners are seen laying down sleeping.

Attached to this report are digital photographs of the flexi cuffs utilized during the detainment, and a close-up photo of an MPD member while restrained in this manner.

Videotapes were obtained that were taken by MPD personnel assigned to record the demonstrations. The video segments depicting the events at Pershing Park commence after all of the protesters were lead into the park. The video further shows MPD and U.S. Park Police (both on foot and mounted on horses) surrounding a large group of protesters. Finally, the video depicts MPD officers entering the cordoned-off area, physically grabbing hold of individual protesters, and placing them under arrest. There is no video of the detention facility at the IPS. Force Investigation Team investigators and managers scrutinized the videotape at length. The tape does not reveal any new information relative to this review.

Policy Review

The Force Investigation Team conducted a policy review of the facts surrounding the department's arrest, transportation, and detention procedures used during the IMF/World Bank protests. Specifically, investigators and managers assessed the protocols used by police commanders as they relate to arrests and prisoner processing during this incident.

Moreover, decisions made by MPD command officials during the events at Pershing Park were evaluated. FIT members have reviewed the written procedures enumerated in the operational manual that was created and implemented by the Special Services Command during the IMF/World Bank demonstrations.

The following is a precise dissection of each category identified in this report as either a possible policy violation or one that is ambiguously written, thereby leaving certain aspects open to individual interpretation. Recommendations to remedy any noted deficiencies are presented immediately following this review.

ARREST

On September 27, 2002, there were numerous protest groups that later converged into Pershing Park. For instance, Fourth District CDU bicycle squads monitored a group of bicyclists traveling from Union Station to Pershing Park. Based on interviews with Captain Andrew Solberg—the command official that oversaw the monitoring of the bicyclists toward the park—no warnings were given to the riders that they might be subjected to arrest. Moreover, they were followed to Pershing Park and were allowed to enter the area blocked off by police.

Based on interviews and other facts gathered in this case, it is possible that there were individuals in the park that were not part of any groups headed toward the park under continuous observation by police. There is no evidence that the park had been cleared before the larger group of protesters was allowed to enter the park.

With regard to arrests, the following specific questions were raised in order to further this review:

Why were the protesters in Pershing Park arrested?

The order to arrest the protesters in the park was given by Assistant Chief Peter Newsham. Based on his account of events that lead up to the order to arrest, groups of protesters were moving through the streets and advancing toward the park. Assistant Chief Newsham personally observed some of the violations, while other violations were observed by other members of the department, and were relayed to him at a later time. Specifically, Chief Newsham was aware of the following:

- Assistant Chief Newsham personally observed a large group marching in the street and overturning newspaper stands.
- It was relayed to Assistant Chief Newsham that several protesters broke a bank window a few blocks away and were becoming increasingly violent.
- It was relayed to Assistant Chief Newsham that various protesters had illegally marched in the street and were ordered innumerable times to get back onto the sidewalk.

Based on Assistant Chief Newsham's explanation, the protesters in Pershing Park had committed violations *before* entering the park. Groups of protesters were marching in the street and were supposedly warned by officers to get back on the sidewalk. Moreover, a group of bicyclists had illegally traveled in a large group from Union Station toward the park, in violation of District of Columbia traffic laws. Assistant Chief

Newsham essentially used the park as a roadblock of sorts, in which protesters who had already broken the law were stopped and arrested.

Analysis:

It appears that the decision to arrest everyone at the park was based on incomplete information. The demonstrators that violated specific laws should have been separated or stopped at the time the violations were observed and arrested. Pershing Park was used as the holding area until the arrests could be affected. It is possible that numerous persons inside of the park had arrived there lawfully. Several clusters of demonstrators who committed separate violations were all combined into one large group in the park and charged with *Failure to Obey a Police Officer*.

It is a much easier task employing hindsight and evaluating the decisions made by command officials months later, than being in a position responsible for making those decisions in the field. Furthermore, the decision must be evaluated in a specific context and not in a vacuum. Specifically, protesters had threatened to "shut down the city" on numerous occasions both to police and the media. The MPD was tasked with not only safeguarding life and property in the immediate area of the demonstrations, but also for maintaining clear and safe passages into and throughout the city due to heightened terrorism alerts. (See the attached flyers posted by protest groups on the Internet threatening to "shut down the city").

It is clear that the judgment to arrest the protesters in the park was made in good faith, and following an assessment of all of the facts and circumstances. However, it cannot be established that all of those persons in the park were part of any particular group engaged in unlawful behavior.

Were the charges placed on the Pershing Park demonstrators correct?

All of the demonstrators in the park were charged with *Failure to Obey an Officer*. This is a District of Columbia traffic regulation³ utilized primarily for purposes of ensuring that officers tasked with directing traffic have the authority to direct motorists and pedestrians in a proper and safe manner. The field arrest forms from Pershing Park indicate that each arresting officer personally attested to the fact that he or she saw the protester depicted in the form engaging in unlawful activity, and individually gave a warning to cease such activity.

Analysis

As previously stated, each arrest form from Pershing Park indicates that a specific officer saw the listed demonstrator engaging in unlawful activity—in this case, walking in the street—and subsequently issued an order to that particular demonstrator to

³ District of Columbia Municipal Regulations, Title 18, Chapter 20, Section 2000.2: No person shall fail or refuse to comply with any lawful order or direction of any police officer, police cadet, or civilian crossing guard invested by law with authority to direct, control, or regulate traffic.

cease that activity by returning to the sidewalk. Further review of this matter exposed that this was in fact not the case—none of the officers could actually testify that he or she gave the defendant described in the field arrest form a warning. In other words, officers could not be accurately linked to the defendant pictured and arrested. It is likely that several officers along the impromptu parade route shouted at demonstrators to return to the sidewalk, but none could be truly linked to a specific demonstrator.

It appears that this was an improper charge for this particular event, and was somewhat of a departure from previous mass demonstration arrest charges. The *Failure to Obey an Officer* charge could have held up to judicial scrutiny if every arresting officer was able to conclusively substantiate each of his or her arrests.

A more appropriate charge would have been *Parading Without a Permit* for the protesters marching in the street, and *Incommoding or Disorderly Conduct* for those engaged in that specific behavior a few blocks away. In this manner, officers tasked with arresting protesters could more easily explain the conduct they observed as long as command officials on the scene of the mass arrests ensured that each field arrest form properly illustrated that the listed officer observed the listed defendant as part of a group engaged in whatever illegal activity.

It is important to stress the point that each arresting officer, by current MPD mass arrest standards, can arrest up to a maximum of 15 demonstrators at one time, but must be able to testify that he or she saw the defendant engaged in illegal activity as part of a group. In other words, each officer will not necessarily be able to identify each and every defendant in his cluster of arrestees, but will be able to testify that the defendant was part of a group of protesters that he or she observed engaged in illegal activity. Moreover, the field arrest form and photograph of the defendant will further strengthen this assertion. In the Pershing Park case, the arrest paperwork could not support the claim that each officer personally warned each of the defendants listed in the form.

Why were warnings to disperse not given in Pershing Park?

In the preliminary stages of this review, much of the focus surrounded around the question: *why were the protesters in the park not warned or given an opportunity to leave?*

According to MPD's Mass Demonstration Handbook, at least two documented warnings prior to arrest must be made. This has been the practice in previous mass arrest situations—a Civil Disturbance Unit command official would normally issue the warnings by utilizing a bullhorn. In this manner, the demonstrators would be informed as to which law they were violating, and that they would be subjected to arrest if they fail to disperse. A key component of this strategy is enabling the demonstrators to leave after the initial warnings are given.

The examination of the Pershing Park arrests has revealed that no warnings were given to the demonstrators in the park. A review of the videotape, which captured the arrests at the park, does not reveal any warnings given. Moreover, Assistant Chief Newsham, Captain Solberg, Park Police Major Murphy, and numerous other interviewed individuals stated that they heard no warnings to disperse given by police.

Analysis

Assistant Chief Peter Newsham, the MPD command official in charge of the zone encompassing Pershing Park, stated that no warnings were given to the demonstrators because they had essentially been warned *before* entering the park. According to Chief Newsham, prior to arriving in the park, the protesters had committed violations while en route to the park, and had been warned countless times by officers to disperse, to get back on the sidewalk, and to cease their disorderly doings.

There is no conclusive evidence to support the fact that demonstrators were warned before entering the park. However, once carefully examined, the relevancy of whether warnings were given *in the park* came into question. Chief Newsham explained that warnings were not given, nor were any required because in his mind, the demonstrators had already violated the law and were technically already under arrest. In other words, the warnings were not only unnecessary, but would have proven to be completely counterproductive to the task at hand.

After considering the totality of the circumstances of this incident, it appears that the lack of warnings was based on the assumption that the demonstrators had already been warned prior to entering the park, and that the park was merely used as a holding area for affecting the arrests.

TRANSPORTATION

Once prisoners were placed under arrest, they were flexi-cuffed, in most cases behind their backs, and placed on Metro buses that were driven to the Institute of Police Science. This review did not uncover any particular issues with transportation of prisoners, with the exception of delays in processing, which led to longer periods in which arrestees were kept on buses. Due to a backlog in prisoner processing, once brought to the IPS, some groups of arrestees spent several hours sitting on buses, or waiting outside of the building until brought in for processing.

DETENTION

Arrestees were transported to the Institute of Police Science gymnasium for detention and processing. The MPD currently does not have a permanent processing facility capable of handling hundreds of arrests. The IPS, along with satellite operations, was set in place in anticipation of the possibility of hundreds of arrests arising from this event.

Once prisoners were brought to the IPS, they were flexi-cuffed strong wrist-to opposite ankle, with one flexi-cuff in between. The flexi cuff between the two binding cuffs was placed in order to extend the area between the wrist and leg approximately 10 to twelve inches.

Analysis

Complaints arose prior to, and during this review, alleging that prisoners were improperly restrained. The complainants described the restraint as "hogtying."⁴ The interpretation of the word "hogtying" is subjective, and it maintains a generally negative connotation. In common vernacular, "hogtying" is generally viewed as the restraint of legs and arms together on some type of pole or device. It should be made clear that this did not occur in this case.

Based on the accounts of several officials with extensive experience working in Prisoner Control, they must rely on a fairly simple and easy-to-maintain system which would prevent hundreds of prisoners from walking around freely in the gymnasium. This was vital for several reasons. For instance, allowing prisoners to remain unrestrained could give them opportunity to regroup and stage additional protests inside of the facility. This would cause enormous delays in processing time and could subject both prisoners and officers to injury. More importantly, once arrestees are taken into custody, the MPD becomes responsible for their safety until they are released.

It should be noted that this restraint technique was utilized in April of 2000 during the IMF/World Bank protests. During that weekend, approximately 1197 demonstrators were arrested. Arrestees were restrained in this same manner in the two main "open-area" processing facilities—the Institute of Police Science gymnasium, and DC General Hospital Building 25. The majority of arrestees were flexi-cuffed in the same manner in which the prisoners at the IPS were restrained on September 27, 2002. To date, no complaints have arisen from the April 2000 arrests with regard to restraint techniques.

The investigation revealed that there were hundreds of arrestees confined in the gymnasium, with no holding facilities. Moreover, Police officials in charge of prisoner processing were concerned about officer safety and the possibility of escapes because of the large number of prisoners. Captain Cleora Sharkey made the decision to restrain the prisoners with flexi-cuffs strong wrist to ankle as this method had been utilized in the past. Inspector Joel Maupin authorized this method. Both of these police officials indicated that prisoners were un-restrained to use the restroom, and were subsequently escorted by officers on a regular basis for such breaks. This decision appears to be sound, based on the circumstances faced by the officials. The situation was fluid and rapidly evolving, requiring an immediate decision.

Additionally, there were apparent computer-related malfunctions that delayed prisoner processing. Some prisoners may have been detained for up to 18 hours. These delays were not illegal, and were remedied as soon as practicable. A decision to institute

⁴ Webster's Dictionary defines *hogtying* as: 1. to tie the four feet or the hands and feet of 2 [colloq.] to make incapable of effective action.

manual backup procedures should have been implemented immediately, rather than waiting for technicians to trouble-shoot and repair automated systems. Operational tests should be conducted prior to major events to ensure that the Prisoner Control server is operating properly, and scheduled maintenance to information technology systems should be rescheduled or postponed to avoid negative impacts on information systems availability.

MPD General Order 502.1 (Transportation of Prisoners) states in part:

"Members shall not attach handcuffs to leg restraints in such a fashion that forces the legs and hands to be close to one another (i.e.-hog-tying), or place a person in a prone position, lying face down."

The departmental order stipulates that legs and hands cannot be tied to one another as that is considered "hog tying." In the case of the actions taken by prisoner processing personnel at the IPS, it is evident that arrestees' arms and legs were not tied together, but rather, only one wrist was tied to the opposite ankle, making them capable of some movement. The purpose of this type of restraint was to prevent arrestees from walking around, and not to incapacitate them completely. Photographs and personal experiments by Force Investigation Team investigators clearly show that this type of restraint allows for limited movement, and does not meet the criteria for "hog tying."

Additional Handcuffing Techniques

The Special Services Command'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 wrist 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.

Force Investigation Team members reviewed the current practices, and offer the following suggestions as alternatives to the current technique:

- o Utilize the current technique with minor variations. This technique is the most cost effective and manageable. The only suggestion is to add another flexi-cuff between the strong hand and opposite ankle in order to extend the distance between the arm and leg. This technique would still prevent prisoners from roaming freely in an open space, but would allow for more room to stretch or move to less awkward position. However, this method should be illustrated in greater detail in the Prisoner Control Plan.

- o Use a fixed object placed on the floor between prisoners, who are in turn handcuffed to the fixed object.
- o Purchase fenced cages used as temporary holding cells—in this manner several prisoners can be detained in one holding cell under the constant watchful eye of officers assigned to the detail.

RECOMMENDATIONS

After careful review of the facts surrounding this case, several issues arose as areas of concern with regard to MPD practices that are either lacking in precise policy, or somewhat nebulous and thereby open to interpretation. It is recommended that the following issues be considered prior to future large scale events involving the MPD:

- o Reexamine the current command and control structure utilized during major events to ensure that command officials receive timely and accurate information from which to base decisions on during large-scale events.
- o Review the procedures used for arrests during mass demonstrations and update the Mass Demonstration Handbook to reflect the current operational plans and methods that have been utilized by the department.
- o Implement manual backup procedures immediately upon receiving notification that the Prisoner Control automated booking programs are, or are about to be, off-line and not available for service.

In closing, it is concluded that the actions of police officials during the September 27, 2002, arrests at Persing Park were made in good faith. However, it is also concluded that police officials on the scene made procedural errors as it relates to the affecting of arrests, choice of criminal charges, and manner of arrest documentation. Further, it is concluded that technical equipment problems and the failure to implement manual backup booking procedures led to processing delays, which in turn caused longer than usual periods of detention. Finally, it is determined that allegations of excessive force are unfounded and that the restraint techniques utilized by prisoner processing personnel were reasonable given the circumstances.