

there were discussions among command staff "about us setting the tone because of the way that the information was coming out that the protesters, again, wanted to take the city over, they wanted to shut the city down. And I think that the police department wanted to set the tone that we weren't going to allow that to happen in the nation's capital." Commander W. E. Dandridge in his after-action report notes: "The option to start mass arrests early on Friday morning proved highly effective and set the tone for the remaining days of the detail."

On the evening of the Pershing Park arrests, Chief Ramsey responded to a reporter's question about the arrests with this statement:

Remember, they had no business being in the street. There was no parade. You can't just take over Pennsylvania Avenue. You just can't take over 15th Street. For the last four months, these folks been talking about shutting down the city. When they do something like that and they fail to move, I can only presume that's what they intended to do. And that happens to be illegal. And we took the action that was appropriate.

According to the deposition testimony of some MPD witnesses, including CDU training Sgt. Keith DeVille, the size of anti-globalization demonstrations has decreased since April 2000. This testimony is consistent with information provided to the Woodley Park community from a representative of the IMF, Pat Davies, during a community meeting in August 2002, one month before the Pershing Park arrests. Davies told the community that, particularly since September 11th, the "ferocity of violence" associated with anti-globalization demonstrations "is significantly reduced." Yet the rhetoric from MPD concerning the threat posed by anti-globalization demonstrations has remained the same since 2000.

The Committee subpoenaed documents from George Washington University (GWU) and received in response a copy of an internal e-mail recounting a conversation with IMF security that contained speculation on this issue:

[Individual's name] just got a call from his contact at the IMF in charge of security. This person has heard nothing about violence. He suspects that Chief Ramsey is just trying to clear the streets. He said there may be political reasons as well.

According to George Washington University (GWU) campus police, GWU informed its students that "All of the indicators are that the protests will be nonviolent in nature and the majority of guests, including protesters, will peacefully exercise their first amendment rights."

At the Committee's December 18, 2003, public hearing Chief Ramsey was asked about the discrepancy between his public announcement that from 20 to 30,000 protesters were expected in the city and the department's own internal estimates that no more than 4,000 persons were expected at any individual event. He responded that MPD makes the most accurate crowd projections it can for upcoming demonstrations, and refused to acknowledge that the information the Department distributed internally differed from the information it shared with the public.

There can be serious consequences to releasing inaccurate information about the potential for civil disturbances during demonstrations. First, it is a violation of the public trust to release misleading information to the public. Second, there is a risk that law enforcement may over-react as a result of "over-preparing" for a crowd that is portrayed to be larger and more threatening than it is in reality. The massive over-reaction by the police during the international trade talks in Miami is an example of this phenomenon. According to the public hearing testimony of AFL-CIO chief international economist Thea Lee, who helped organize meetings of the AFL-CIO during the international trade talks in Miami in November 2003, labor organizers repeatedly gave crowd estimates for demonstrations of 10,000-20,000 people, yet Miami police officials made public statements projecting that 70,000-100,000 demonstrators would be in attendance.

Despite Chief Ramsey's testimony during the public hearing that MPD had no idea that the demonstrators would end up in Pershing Park, it is in fact the case that intelligence reports contained information about the three major events planned for that morning - the convergence and march at 14th and K Streets, the bike ride, and the convergence at Freedom Plaza at 9 a.m. At each location, MPD amassed resources necessary for arrests in advance. And at each location, mass arrests were made.

The rationale for the arrests at Pershing Park was based on alleged unlawful activity earlier that morning, but MPD commanders did not have probable cause to arrest everyone in the park on the basis of those allegations.

Assistant Chief Newsham testified that MPD had probable cause to make the mass arrest based on the fact that those arrested were demonstrating without a permit. He testified that earlier in the morning, he observed demonstrators turning over newspaper boxes and ignoring orders of MPD officers to get out of the street. He also testified that he had heard that demonstrators broke a window at Vermont Avenue and K Street earlier that morning. But Assistant Chief Newsham could not be sure that the people inside Pershing Park were responsible for the earlier activity. In response to an observation during his deposition that "it's very possible that the people who were parading without a permit or who had knocked over something or who had perhaps been involved over at Vermont and K that they went away," Assistant Chief Newsham testified:

I wouldn't agree with that and I'll tell you why because the people who participate in IMF demonstrations are very distinct looking people in that they dress alike and they're generally of a certain age range and they're generally carrying something that's indicative of being a protester, whether it be a drum or a sign.

The assumption that all of the individuals in the park, based on their appearance, were responsible for breaking the law earlier in the morning does not constitute probable cause to arrest them. Relevant constitutional case law, as well as MPD policy, requires that during mass demonstration situations, there must be probable cause that *each* of the demonstrators being arrested has broken the law. This point was reiterated by the testimony of Robert Klotz, a retired Deputy Chief of Police, Commander, MPD Special Operations and Traffic Division commander. Mr. Klotz testified that if a few people participating in a demonstration break the law, the police need to arrest only the law breakers, not all of the demonstrators. This is the mass arrest policy and practice of MPD as articulated by the testimony of Sergeant Keith DeVille, who supervises the civil disturbance training unit, and Lieutenant Jeff Herold, who is the commanding officer of the Domestic Security Operations Branch of MPD's Special Operations Division. Both Sgt. DeVille and Lt. Herold testified that MPD's mass arrest policy was applicable to the circumstances at Pershing Park.

If the rationale for the arrests is that demonstrators failed to disburse or were on an un-permitted march, the arrests were still unlawful because MPD arrested demonstrators at Pershing Park (as well as at Vermont Avenue and K-Streets) without first giving orders or warnings, in violation of MPD policy.

The Pershing Park arrests also violated MPD policy because warnings were not given in advance of MPD's closing the park and making arrests. The MPD mass arrest manual states:

When the intensity level of a crowd rises and unlawful disruption, either through violent or passive means, is occurring to the extent that the Field Commander determines there is a need to make a positive police response, he/she will instruct the affected unit commanders, when time and circumstances permit, to issue warnings to the crowd to disperse. In issuing such warnings the following procedures shall be utilized by unit commanders.

a. Issuance of Warnings

- 1) The issuance of warnings shall be of such amplification and repetition as to be heard by the entire assemblage.

- 2) Issuances shall be made by the unit commander from stationary vantage points that are observable to the crowd, or to a large number of participants.
- 3) Additional warnings, where necessary, shall be given from police vehicles, equipped with public address systems, moving around the crowd.
- 4) The warning shall consist of an announcement citing the offenses or violations that are being committed by the participants, and a request or order, whichever is applicable, that the crowd disperse. Whenever possible, this warning shall be written out prior to the announcement, to ensure clarity and accuracy, and consistency, if the warning is repeated.
- 5) The entire warning process shall be documented by means of an audio-visual recording, if available. If this is not available, then written documentation must be retained and made a part of any arrest files.

Again, Assistant Chief Newsham's belief that actions on the part of MPD officers earlier that morning constituted enough warning that demonstrators would be arrested does not constitute compliance with the manual's mass arrest procedures. Further, Assistant Chief Newsham himself described the circumstances as static, so presumably circumstances would have permitted warnings. Contemporaneous press accounts corroborate the static nature of the crowd.

The timing of the arrests at Pershing Park is also important to evaluating their appropriateness. Even if, as Assistant Chief Newsham has testified, the arrests were made on the basis on demonstrators' failure to obey orders earlier in the morning, the fact remains that MPD did not take any positive police action immediately following the alleged violations of law. A significant period of time elapsed before the park was sealed off and the arrests made, and during that time period, MPD did not give demonstrators' any indication that there would be consequences for the earlier violations.

The Committee received expert testimony on this point from Robert Klotz. Mr. Klotz testified that during a mass demonstration situation, if the police overlook minor violations of law for a period of time, it is important to communicate a fair amount of notice before the police change tactics and begin to enforce the violations of law. At Pershing Park, no communication of this kind - including a warning consistent with MPD policy - took place during the 30 minutes between MPD's partial closure of the park and its final action to seal off the park and make arrests. The fact that bystanders totally uninvolved with the demonstration, as well as reporters, were swept up in the arrests, further substantiates this point. Julia Abbate, who wandered into Pershing Park to observe the demonstration, testified that, in fact, she followed every order given

by police that morning, and that if she had heard any order to disperse, she would have. But no order was given and she was trapped inside the park and arrested.

Chief Ramsey is responsible for the arrests at Pershing Park, though he initially testified before the Judiciary Committee that he was not a part of that decision.

As the testimony of both Assistant Chief Newsham and Chief Ramsey confirms, Chief Ramsey was a full participant in the decision to conduct a mass arrest at Pershing Park. But in testimony before the Judiciary Committee on February 25, 2003, after the completion of MPD's Force Investigation Team report finding Assistant Chief Newsham responsible, Chief Ramsey testified that he was not a part of the decision. The following is a transcript of that testimony:

Councilmember Patterson: "And whose decision was it to make the arrests in Pershing Park that day?"

Chief Ramsey: "Assistant Chief Newsham was assigned to that particular sector that we had, that area that we had. All the assistant chiefs were given areas of responsibility and that happened to be his area."

Councilmember Patterson: "And you were not a part of that decision making yourself?"

Chief Ramsey: "No. When I came up on the scene, actually, that was already practically in progress. I was all over the various locations where we had incidents taking place ... But I was there when the arrests were taking place."

Further, according to MPD policy and District regulations, since Chief Ramsey was on the scene at Pershing Park, he was the official in charge. MPD's manual on mass demonstrations states that the highest ranking official on the scene is the "field commander," and is, therefore, in charge. Section 800 of Title 6A of the D.C. Municipal Regulation's states: "The Chief of Police shall, when necessary, immediately proceed to the scene of any riot, tumultuous assemblage, or other unusual occurrence and take command of the force and direct its efforts in the work at hand."

The official version of what occurred and what went wrong at Pershing Park as presented in the testimony of Executive Branch witnesses fails to acknowledge the fundamental flaws in MPD's execution and interpretation of its mass arrest policy that day. This failure has consequences in terms of MPD's commitment to protecting First Amendment rights during future demonstrations, as well as its ability to objectively review its own policies and procedures.

What is most striking about the mass arrests at Pershing Park is that the executive branch has repeatedly attempted to minimize the nature and extent of the mistakes that were made. During their public hearing testimony, Deputy Mayor for Public Safety and Justice Margret Kellems, Chief Ramsey, Assistant Chief Newsham, and Office of Corporation Counsel attorney Tom Koger refused to retreat from the position that the arrests themselves were not unlawful. To the extent that particular actions on that day were deemed problematic by these hearing witnesses, they were presumed to be the result of individual error, rather than the result of policy flaws. According to the department and the Williams administration, the blame for the Pershing Park mass arrests falls almost entirely on Assistant Chief Newsham, who was deemed guilty of not following procedure because of the failure to issue warnings and of using the wrong charge – failure to obey a police order instead of parading without a permit. They testified that Assistant Chief Newsham was correct in ordering the arrests, but his mistake was in not following procedure.

All of this creates the false impression of an action that was only technically incorrect, not fundamentally flawed. This belief does not bode well for the protection of First Amendment rights during demonstrations in the District in the future. Nor would it give rise to a thorough review of the Department's policies and procedures in handling demonstrations. This final consequence is most clearly illustrated by MPD's internal investigation into the Pershing Park arrests, an investigation discussed in detail in the next section of this report.



CASE STUDY: THE PERSHING PARK INVESTIGATION

A factor in the decision by the Judiciary Committee to conduct an investigation of policies and practices of the Metropolitan Police Department in handling demonstrations was the failure of the department to conduct a thorough and objective internal review of the problematic arrests in Pershing Park in September 2002.

The need for a review of the Pershing Park arrests was clear almost immediately. On the evening of September 27, 2002 at approximately 5 p.m. Mayor Williams held a press conference attended by Deputy Mayor for Public Safety and Justice Margret Kellems, and Chief Ramsey. A reporter asked about the manner in which the arrests at Pershing Park were made. The following reflects an excerpt from videotape of the press conference:

Reporter: "A number of the protestors have said they were never given warnings before they were corralled by your officers and arrested. How do you answer that?"

Chief Ramsey: "Well, I mean we gave warnings. I mean, when you've got large groups like that, obviously, I mean there's a lot of noise and things like that. But we gave warnings, we followed everything by the book."

Reporter: "Did your officers use bullhorns at 15th and Pennsylvania Avenue?"

Chief Ramsey: "I wasn't there at the time but we gave verbal commands...people to get out of the street. But remember, they had no business being in the street. There was no parade. You can't just take over Pennsylvania Avenue, you can't just take over 15th Street..."²⁰

Television media reports on the evening of September 27, 2002 included interviews of a woman who did not participate in the demonstrations but was swept up and arrested by MPD as she biked to work. The same evening broadcast included reports of technology breakdowns at the police academy contributing to delays in the release of those arrested. Newspaper coverage of the arrests the next day and for weeks following, contained allegations of illegal arrests, excessive use of force, and other improprieties on the part of MPD.²¹

²⁰ FOX 5, 5 p.m. News, September 27, 2002

²¹ "Police Arrest Hundreds in Protests; Anti-Capitalism Events Cause Few Disruptions," Manny Fernandez and David A. Fahrenthold, *The Washington Post*, September 28, 2002

"A Day of Tightly Controlled Chaos," Monte Reel, *The Washington Post*, September 28, 2002

"Did Police Go Too Far?," *The Washington Post*, October 1, 2002

In a September 30, 2002 letter to Mayor Williams, Councilmember Patterson objected to the level of resources spent on the demonstrations, noting that preparations for 20,000 – 30,000 demonstrators were made when only a couple thousand participated. She objected to the “*de facto* militarization of the city” and the arrest of nonviolent demonstrators, without warning, at Pershing Park. Mayor Williams responded to Councilmember Patterson’s letter and noted how proud he was of MPD and its partner agencies, stating that they “worked cooperatively to uphold our city’s great tradition of protecting the rights of peaceful and lawful protest, while ensuring public safety at the event sites and in our neighborhoods.” He also objected to Councilmember Patterson’s characterization of the *de facto* militarization of the District. He wrote that MPD “moved decisively to prevent [the shutting down of the city] from happening. In any given situation, the MPD rightfully uses its discretion in responding to non-permitted demonstrations. In this instance, the MPD chose not to tolerate such actions, and I support that decision.”

In addition to press accounts and concerns raised by the D.C. Council, concerns about the arrests were also expressed internally within the department. Fourth District CDU Captain Andrew Solberg submitted an October 12, 2002 after-action report through his chain of command with the following observation:

As a CDU Captain, I was not confident of the legality of our arrests. I had been following the bicycle riders for their entire ride, and at no time did I ever hear or see any MPD officer give an order to clear sidewalks, streets or intersections, meaning that the charge of “Failure to Obey an Order” was not a valid charge. That a great number of the Failure to Obey cases were no papered indicates the United States Attorney’s Office also felt uncomfortable with the charges and/or the arrests.

The Office of Corporation Counsel (OCC) did not paper (i.e., forward for prosecution) any of the Pershing Park arrests because, according to media reports, they “felt they had no probable cause to connect the protester to a particular crime²².”

Four MPD after action reports included relevant observations raising questions about the validity of the arrests. In an October 2, 2002 memo to Assistant Chief Alfred Broadbent, Commander Abraham Parks, then-Director of MPD’s Court Liaison Division, listed a number of reasons OCC did not paper the arrests, including “Officers showed up to paper cases and informed the papering attorneys they did not know why demonstrators were arrested.” A number of

“City’s Quandary: Peaceful Streets Vs. Right to Assemble,” David A. Fahrenthold and Manny Fernandez, *The Washington Post*, October 17, 2002

²² “City’s Quandary: Peaceful Streets Vs. Right to Assemble,” David A. Fahrenthold and Manny Fernandez, *The Washington Post*, October 17, 2002

after action reports submitted by command officials made similar observations, including the following:

- "One large underlying problem remains the fact that arresting officers arrive at the prisoner processing sites with what appears to be temporary amnesia. Some officers state that they have no knowledge pertaining to the arrests." – Assistant Chief Shannon Cockett, October 11, 2002 memo to Executive Assistant Chief (EAC) Michael Fitzgerald through Senior Executive Director Nola Joyce.
- "Each CDU platoon should have a captain that is responsible for monitoring activities to ensure that arresting officers are made aware of the facts and circumstances leading to arrests and be able to identify same." – Assistant Chief Brian Jordan, October 10, 2002 memo to EAC Fitzgerald.
- "It is recommended that an in-house committee be established to conduct an extensive and immediate review of all the components of our mass arrest procedures and processes; the operational handbook be updated accordingly, and the related training be designed and provided." – Commander Joe Griffith, October 11, 2002 memo to Assistant Chief Alfred Broadbent through EAC Fitzgerald.

Between September 27 and October 24, 2002, the Judiciary Committee received additional information in letters and e-mails from persons arrested at Pershing Park and detained for 24 hours or more. The panel was urged to hold an oversight hearing on the issue.

On October 24, 2002, the Committee on the Judiciary held a previously-scheduled public hearing on pending legislation pertaining to personnel practices within the police and fire/EMS departments. Among the witnesses at that hearing were three individuals who recounted serious allegations of improper arrest and excessive force on September 27, 2002.

Based on that testimony, Councilmember Patterson immediately contacted Mayor Williams and urged him to initiate an investigation of the arrests and detentions. Mayor Williams, in a letter dated November 6, 2002, directed Chief Ramsey to conduct an investigation to be completed within 10 days. In a November 12 response, Chief Ramsey indicated that the Department's Office of Professional Responsibility would conduct the investigation, a decision that, in and of itself, became a matter of controversy.

To assist the Department, the Judiciary Committee provided a copy of the October 24 testimony in both written form and in a videotape of the hearing provided to the office of Deputy Mayor Kellems. Councilmember Patterson also provided a second videotape of the testimony to Assistant Chief Peter Newsham,

Director of the Office of Professional Responsibility (OPR), who was at that time on administrative leave. On November 22, 2003, Acting OPR Director Inspector Stanly Wigenton called the Judiciary Committee for assistance in locating the October 24 witnesses, and Amy Mauro of the Committee staff provided the police department with the telephone number of the ACLU of the National Capital Area to facilitate the police department investigation.

Upon receiving the directive from Chief Ramsey to investigate the allegations of the Judiciary Committee hearing witnesses, Inspector Wigenton assigned the matter to Inspector Ederheimer, who in turn assigned the investigation to Captain Klein, commander of the Force Investigation Team (FIT). Captain Klein assigned the investigation to FIT Sergeants James McCoy and James McGuire, who conducted the investigation, reviewing the appropriate documents and conducting interviews.

Shortly after the start of the investigation, Sergeants McCoy and McGuire learned that Assistant Chief Newsham was the official in charge of the area surrounding Pershing Park on September 27, 2002, and that the investigation would focus primarily on decisions made that day by him. Because Assistant Chief Newsham is the highest ranking supervisor of Sergeants McCoy and McGuire, this presented an issue for the investigators. According to their deposition testimony, Sergeants McCoy and McGuire discussed this issue and felt that it would not be appropriate for the FIT to continue the investigation. Sgt. McGuire made this point to his lieutenants, Captain Klein, and Inspector Ederheimer. In addition, he said that, to his knowledge, the FIT had never before investigated an official at the rank of assistant chief or higher. Sergeant McCoy also testified that he had never investigated an official at the rank of assistant chief.

When asked about this issue, Inspector Ederheimer said he recalled some discussion about whether the FIT should continue with the investigation. He said that he could not recall the FIT conducting any investigation of an official at the rank of assistant chief or higher in the past, but that it would not have been conventional to refer such a matter to the Office of the Inspector General. In response to a question about this issue in an October 10, 2003 written deposition from the Committee, Chief Ramsey responded:

The investigation was not assigned to the Office of the Inspector General because under the memorandum of understanding between that office and MPD, "allegations for criminal or administrative misconduct by employees of the MPD brought forth to, or discovered within the MPD, will be investigated by the MPD's Office of Professional Responsibility or as determined by the Chief of Police." Additionally, Assistant Chief Newsham at the time was on administrative leave with no clear date when he would return to duty. Accordingly, *it was not inappropriate to have OPR*

investigate this matter since the investigating officials would not be reporting to Assistant Chief Newsham as they would under normal circumstances [emphasis added].

Finally, Chief Ramsey stated:

The investigation was not assigned to any other outside organization because it was apparent to me that all decisions made during this event were made in good faith and were not criminal in nature. [emphasis added]

When it came time for the investigators to interview Chief Newsham, Sergeants McCoy and McGuire were informed by Captain Klein that they would not be interviewing the assistant chief, despite the fact that the sergeants had conducted every other interview related to the investigation. Instead, they were directed to write a list of the questions they had for Assistant Chief Newsham and were informed that EAC Fitzgerald would conduct the interview. According to Inspector Ederheimer, he attended a meeting with Chief Ramsey, EAC Fitzgerald, Inspector Wigenton, Commander Ponton, and MPD General Counsel Terry Ryan, when this issue was discussed. At this meeting, Inspector Ederheimer recommended that the sergeants not interview Assistant Chief Newsham because it would be "awkward" for members of the FIT to interview their commanding officer. It was then agreed that Terry Ryan would conduct the interview.

According to Chief Ramsey's response to the October 10, 2002 written deposition, he subsequently "determined that Executive Assistant Chief Fitzgerald would interview Assistant Chief Newsham." He "initially felt that Assistant Chief Newsham should be questioned by the General Counsel. However, upon further discussion and reflection, [he] decided that Assistant Chief Newsham should be questioned by a ranking official rather than the General Counsel." This decision apparently was made notwithstanding the earlier determination that it "was not inappropriate" for the FIT to investigate the actions of Chief Newsham.

The decision to have EAC Fitzgerald interview Assistant Chief Newsham brought an official who was not assigned to the FIT into a confidential investigation, an action inconsistent with typical investigative practice. During his September 26, 2003 deposition, EAC Fitzgerald was asked about this decision.

Q: "Do you know why you were asked to conduct the interview of Chief Newsham?"

A: "Because I was a senior officer, senior official."

Q: "I ask because obviously you're outside of the Office of Professional Responsibility."

Q: "And why would you not see a conflict in that?"

A: "Because I'm a professional police officer. I've been here 32 years. He's been a professional for 15 years. As the investigation has pointed out, it's still (inaudible) based on any of the rights and wrongs that were involved in reference to that."

After the sergeants finished their investigation, Captain Klein wrote the investigative report. According to the deposition testimony of Inspector Ederheimer and Captain Klein, Klein, instead of the investigating sergeants, wrote the final report because it was an important matter, because Inspector Ederheimer wanted the report done well, and because Inspector Ederheimer had confidence in Captain Klein's ability to do a good job.

Captain Klein then wrote the report, signed it, and submitted it to his supervisors. The signed report had the subject line, "Final 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." Earlier unsigned drafts of the report that were provided to Chief Ramsey had the subject line "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."

Shortly after completing what was at the time his final signed report, Captain Klein was called into a meeting with Chief Ramsey, Commander Ponton, and Inspectors Wigenton and Ederheimer. According to the deposition testimony of each, during this meeting, several changes to the report were recommended and/or directed. After the meeting, Captain Klein returned to his office and made the directed changes and forwarded one or more revised versions of the report to Chief Ramsey's office. Inspector Wigenton, at the request of Commander Ponton, subsequently asked Captain Klein for an electronic version of the report on disk, which Captain Klein provided to Inspector Wigenton.

At that point additional changes were made to the report in Chief Ramsey's office. The document was sent to Deputy Mayor Margret Kellems who, in turn, shared the report with Councilmember Patterson. The "final report" that ultimately went to Deputy Mayor Kellems and was forwarded to Councilmember Patterson had only one signature on it, that of Inspector Josh Ederheimer. It had no additional signatures despite the fact that it contained blank signature blocks for Inspector Wigenton and Captain Klein. This is due to the fact that the report did not go back through the chain of command after the final version was produced in Chief Ramsey's office, a fact verified by the testimony of Commander Ponton.

A: "Yes, ma'am."

Q: "It's my understanding that typically during an OPR investigation only OPR investigating officials conduct interviews; is that right?"

A: "Yes, ma'am."

Q: "So why would you conduct interview in this instance?"

A: "I was instructed to do the interview."

EAC Fitzgerald also indicated that he did not take any steps to familiarize himself with the investigation, according to his deposition testimony.

Q: "— did it occur to you to speak to the investigators in the case to find out more about the situation so you could conduct a full and complete interview?"

A: "No, ma'am."

Q: "So you didn't speak to anybody investigating the case prior to your interview of Assistant Chief Newsham?"

A: "I may have spoke to Inspector Wigenton before, but I did not speak to any of the sergeants, or lieutenants, or captains if that's what you're asking me."...

Q: "Okay. So not with Sergeant McCoy or Sergeant McGuire?"

A: "No"

Q: "And not with Captain Klein?"

A: "No."

Q: "Okay."

A: "Nor would I have."

Q: "Did you — were you able — how did you determine in your mind as you prepared for this interview what questions to ask Mr. Newsham?"

A: "I don't recall."

In fact, during EAC Fitzgerald's interview of Newsham, he asked a majority of the 44 questions prepared by the FIT investigators. Among the prepared questions he failed to ask, however, was this: "Did any chief within the police department, including Chief Ramsey, order the arrests of the protesters in Pershing Park?" In his deposition EAC Fitzgerald was asked twice whether he asked Newsham if he had consulted with anyone else about the decision to arrest. Twice he responded that he had not asked that question.

EAC Fitzgerald's own presence at Pershing Park before and during the arrests was also not referenced in the report or in the decision concerning who would undertake the questioning of Chief Newsham. Another excerpt from the EAC Fitzgerald deposition:

Q: "So you had conversations prior to the order to arrest with Assistant Chief Newsham and the Chief of Police?"

A: "Yes, ma'am."...

Q: "And did you remain on the scene while the persons were arrested?"

A: "Yes ma'am."

Q: "And did you remain on the scene the entire time until the park was cleared, while people were arrested?"

A: "I was -- I was on the scene the majority of the time, yes, ma'am. I can't -- I don't know if I stayed there until the last person was taken out of the park, but I know I was there the majority of the time."...

Q: "So is it fair to say you agreed with his judgment to place them under arrest?"

A: "Based on what he -- based on what he told me, yes, I do."...

Q: "Do you think looking back on this now that there was a conflict for you having been on the scene and heard Chief Newsham's reasons at the time for ordering the arrests and signaling that you agreed with it at that time and then questioning him about his decision to do the order of arrest?"

A: "No, sir."

When Inspector Ederheimer was asked how his signature came to be on the final version of the report when he had not reviewed the final version until after it was provided to Deputy Mayor Kellems and Councilmember Patterson, he stated that he did not know:

Q: That is your signature on that report?

A: That's my electronic signature.

Q: And you say that that is not the report you sent up the chain of command?

A: Correct.

Q: Can I ask how it is that your signature appears on it?

A: I don't know.

Inspector Ederheimer's electronic signature is on the report because it was on the disk Commander Ponton used to print out the final version of the report. Commander Ponton testified that he did not share the final version of the report with the chain of command prior to sending it to the Mayor's office because he assumed that all of the officials agreed with the changes made. He also stated that the changes he made to the electronic version were changes in format only. The report sent to the Mayor and Council was represented as having the imprimatur of Inspector Ederheimer and others although neither Inspector Ederheimer nor the other officials approved or actually signed the final version of the report.

In interviews the Committee raised questions about this chain of events as it is highly unusual for a confidential OPR investigative report and a violation of MPD general orders. MPD General Order 1202.1 Part I. E. 3. Review of Investigation states:

Officials who receive reports and recommendations, shall review the reports and recommendations and either concur or not concur, stating reasons for non-concurrence. Within three (3) workdays after receipt of these materials, the report and recommendation, together with the reviewing comments, if any, and all additional documents relating to the investigation, shall be forwarded, through channels, to the Commanding officer. Reviewing officials may order further investigation. However, *no official shall change any investigation officials' recommendation.* [emphasis added]

MPD officials have defended this course of events. Captain Klein testified that he was not troubled with making any of the changes recommended by Chief Ramsey or anyone else, because he agreed with them, and because the changes

did not alter the overall thrust of the investigation, which is that the arrests at Pershing Park were made in violation of MPD policy. Captain Klein testified that "nothing jumped out at me to say this is different than what the findings were... My overall point and my overall conclusions were still being made in the report so that did not concern me."

Chief Ramsey defended his actions. In response to the Committee's October 10, 2003 written deposition, he stated:

Yes, I suggested some changes to the report submitted by OPR. I requested that materials be added to the report such as the photos of arrestees restrained by flexi-cuffs wrist to ankle and photocopies of flyers and materials protestors disseminated threatening to shut down the city. The report was incomplete and I directed that the focus should be on the facts related to the events of Pershing Park.

During the Committee's public hearing, Chief Ramsey re-iterated that it was his prerogative to direct the changes because this was an important investigation affecting the department and requested by the Mayor. With regard to the general order, read into the record by Councilmember Patterson, Ramsey cited a later section of the same general order, Part I. E. 5. Bureau Commanders, which states:

Bureau commanders who receive disciplinary reports and recommendations shall review such reports and recommendations and shall either concur or not concur, stating reasons for non-concurrence. Bureau commanders may return the matter to the unit commander for further investigation and may add comments to the report and recommendations before returning them.

The earlier section of the general order states that "Reviewing officials may order further investigation. *However, no official shall change any investigation officials' recommendation.*" The later section referenced by Chief Ramsey states that bureau commanders shall *state* "reasons for non-concurrence" and may "*add*" comments to the report and recommendations before "*returning them*" to the investigating official [emphasis added]. The language infers a scenario in which the reviewing official either concurs or does not concur with the recommendations or, if necessary, denotes any comments or suggested changes in writing and returns the report to the investigating official for further work. Indeed, Chief Ramsey himself described this very scenario as proper procedure during a deposition in *International Action Center, et al v, United States of America, et al*. He testified that "any member in the chain of command can send an investigation back for further investigation if they feel that's appropriate or if they don't agree with the findings, they can put a cover sheet on that particular investigation, laying out their reasons for not agreeing with the findings of the investigator."

The general order may well not have anticipated the situation that occurred with the Pershing Park report, in which reviewing officials directed changes in content and in recommendations verbally, obtained an electronic version of the report, then made further changes, without the final text being reviewed by the investigating officials and signed by them.

It is also instructive, when evaluating the appropriateness of what occurred, to review the actual changes made to the report. Following is a chart that compares the first report finished by Captain Klein with the final report provided to the Mayor and Council:

Final internal MPD version	Official version delivered to Mayor and Council
<p>Captain Andrew Solberg 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 a way 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.</p>	<p>Captain Andrew Solberg 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 a way 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).</p>

<p>Arrest - “Based on the testimony of the complaints in this case, it is probable that there were numerous individuals in the park that were not part of any groups headed toward the park under a continuous observation by the police. In other words, there is a strong possibility that persons were already in the park and had not committed any illegal acts prior to arrival of police units who proceeded to block off the area and prevent anyone from leaving. There is no evidence to support a claim that every person in the park had been involved in an unlawful advancement toward the park- either on foot or on bicycle.”</p>	<p>Arrest - “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 the police. There is no evidence that the park had been cleared before the larger group of protestors was allowed to enter the park.”</p>
<p>Arrest - “Based on Assistant Chief Newsham’s explanation, the protestors in Pershing Park had committed violations before entering the park. Groups of protestors were marching in the street and were supposedly warned by officers to get back on the sidewalk. Assistant Chief Newsham essentially used the park as a roadblock of sorts, in which protestors who had already broken the law were stopped and arrested.”</p>	<p>Arrest - “Based on Assistant Chief Newsham’s explanation, the protestors in Pershing Park had committed violations before entering the park. Groups of protestors 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 protestors who had already broken the law were stopped and arrested.”</p>
<p>Analysis - “The decision to arrest everyone in Pershing Park was not sound.”</p>	<p>Analysis - “It appears that the decision to arrest everyone at the park was based on incomplete information.”</p>
<p>Analysis - “It is more than probable that numerous persons inside the park had arrived there lawfully with no intent to commit any violations of the law. Several clusters of demonstrators that committed separate violations were all combined into one large group in the park and charged with Failure to Obey a Police Officer. To further</p>	<p>Analysis - “It is possible that numerous persons inside the park had arrived there lawfully. Several clusters of demonstrators that committed separate violations were all combined into one large group in the park and charged with Failure to Obey a Police Officer.”</p>

<p>support this assumption, at least five members of the Press were released on the Detention Journal later that afternoon, indicating an improper arrest. Furthermore, every case in which demonstrators did not elect to forfeit and had his or her case presented to the Office of Corporation Counsel was dismissed by that office. (footnote: Each of these cases was dismissed because none of the officers could properly attest to which demonstrator was warned – none of the arresting officers could provide testimony to support the claim of failure to obey.)</p>	
<p>Analysis – “However, it cannot be established that all of those persons in the park were part of any particular group engaged in unlawful behavior. The fact that command officials and arresting members could not make a distinction between those that were engaged in unlawful behavior and those that were not, tainted those arrests that were timely and proper.”</p>	<p>Analysis – “However, it cannot be established that all of those persons in the park were part of any particular group engaged in unlawful behavior.”</p>
<p>“The examination of the Pershing Park arrests has conclusively revealed that no warnings were given to demonstrators at the park.”</p>	<p>“The examination of the Pershing Park arrests has revealed that no warnings were given to demonstrators at the park.”</p>

As the chart shows, the original report's strong language condemning MPD's actions at Pershing Park was weakened in several instances in the final version. Of particular interest is the manipulation of the report's characterization of the bicycle demonstrators who were corralled and arrested in Pershing Park along with those demonstrators allegedly guilty of blocking traffic and turning over newspaper boxes prior to their arrival at Pershing Park (Assistant Chief Newsham testified that he had given the second group of demonstrators warnings to get out of the street some time earlier that morning. The bike demonstrators were not present when Assistant Chief Newsham apparently gave those warnings).

The final report states that the bike demonstration was illegal and emphasizes that the bike demonstrators broke the law by obstructing traffic. It is true that the bike demonstration was not permitted, but un-permitted demonstrations by themselves are not suitable grounds for arrest. It is further true

that Captain Solberg, who commanded the CDU that followed the bike demonstrators around the city that morning, stated during his OPR interview:

A: I would think that the bicycle protestors, although they were bicycling fairly slowly along the streets, at no point near Pershing Park, ever stopped and blocked an intersection or created a mass demonstration, focal point, and they were never that I heard, addressed as a group and told that they were infringing any laws.

Q: Were they disruptive when you arrived with them?

A: Certainly disrupted traffic, but that's, I think they were, I don't think they were breaking any laws other than the bicycle laws maybe of riding, and that any riding against the red light or anything like that, I think they followed all applicable bike regulations for the city.

While obstructing traffic may be a violation of the law, during his deposition before the Committee, Captain Solberg characterized the bike demonstrators as peaceful and not violent in any way, a characterization confirmed by the testimony of Sergeant Darrick Ross, who also commanded the officers following the bike demonstrators. Further, the only law the bike demonstrators were arrested for violating was Failure to Obey a Lawful Order. Captain Solberg never heard any orders given to the bike demonstrators.

Finally, Captain Klein's original recommendations were changed between the first and final versions, a direct violation of General Order 1202.1. For example, a recommendation that command staff officials receive additional CDU training was changed to a recommendation with an entirely different meaning, that the command structure be re-examined to ensure that officials receive "timely and accurate information from which to base decisions on." Chief Ramsey testified that he asked for this specific change because he disagreed with Captain Klein's opinion on this issue, and that the command staff would not benefit from the same kind of training received by CDU rank and file officers.

Captain Klein's original recommendation was based on the investigation conducted by Sergeants McCoy and McGuire, which found an Assistant Chief without standard CDU training making a decision in violation of MPD policy, resulting in the improper arrest of hundreds of demonstrators.

Chief Ramsey's March 13, 2003 memo to Mayor Williams delivering the final version of the report states "I reviewed the January 25, 2003 report prepared by the Civil Rights & Force Investigations Division of the Office of Professional Responsibility and concurred with the findings." An ironic statement considering the fact that some of the findings were directed by Chief Ramsey to be changed into a form with which he could agree.

Findings

The Metropolitan Police Department violated its own general orders by failing to promptly initiate a formal investigation of the wrongful arrests and detention when questions about their legality were raised immediately by MPD officials, the Office of Corporation Counsel, the media, and the Council.

General Order 1202.1, Disciplinary Procedures and Processes, Part I. A. g. 7., states that "Upon observing or becoming aware of a violation of Departmental regulations, officials shall initiate an immediate preliminary investigation." This was not followed in the Pershing Park case, and according to MPD testimony is routinely violated insofar as demonstrations are concerned. According to the deposition testimony of Inspector Stanly Wigenton, Director of MPD's Office of Internal Affairs, it is not standard practice for his office to review after action reports following mass demonstrations. Inspector Wigenton testified that the office of Assistant Chief Alfred Broadbent, Special Services, has this responsibility, and any violations reported in after-action reports are supposed to be reported to the Office of Internal Affairs to be properly tracked and investigated. The testimony of Inspector Josh Ederheimer confirmed this interpretation of MPD practice. Inspector Ederheimer testified that the Office of Professional Responsibility is essentially "re-active" in its investigations, typically starting an investigation only after receiving a complaint. Despite the strong denunciation of the arrests by MPD officials in after-action reports the department failed to investigate its own actions until forced to do so by Mayor Williams following repeated requests by the chairman of the Judiciary Committee.

At the direction of Chief Ramsey and in violation of MPD general orders, changes were made to the investigative report after it was completed by the Office of Professional Responsibility. The changes served to weaken criticism of the Department and the nature of the arrests.

The Committee finds this chain of events for a confidential OPR investigative report to be extremely problematic and a violation of MPD general orders. Chief Ramsey's involvement in the production of an internal investigative report regarding a situation in which he was personally involved is highly unusual, inappropriate, and degrades the overall integrity of the investigation itself.

Further, if Chief Ramsey simply did not concur with the recommendations of the report, then he had the option of not acting on its recommendations while permitting the integrity of the report itself to stand. Unfortunately, this did not occur and Chief Ramsey instead directed that his opinions take the place of the findings of the investigating officials.

Again, the only appropriate place for Chief Ramsey's opinion on this matter is whether or not to accept the recommendation of the investigating officials, *not* whether or not to let the recommendation, based on their investigation, stand in the report.

The decision to have Executive Assistant Chief Fitzgerald interview Assistant Chief Newsham was a clear conflict of interest given EAC Fitzgerald's role during the arrests. It also appears to have violated a general order giving the right to interview officials to the investigating officers as well as the MPD's Memorandum of Agreement with the Department of Justice on use of force.

EAC Fitzgerald was on the scene of Pershing Park before, during and after the arrests were made and engaged in conversations with Assistant Chief Newsham prior to Assistant Chief Newsham's order to arrest the demonstrators at Pershing Park. Therefore, EAC Fitzgerald, who testified to having approved Assistant Chief Newsham's actions on the scene at Pershing Park, had an obvious conflict of interest with respect to the subject being investigated, and should therefore have not been involved in the investigation.

EAC Fitzgerald and Chief Ramsey testified that they did not have conversations about what questions to ask Assistant Chief Newsham. But EAC Fitzgerald's selectivity with respect to the questions asked rendered the investigation incomplete, at best.

MPD General Order 1202.1, Disciplinary Procedures and Processes, states that "any official who conducts an internal investigation (hereinafter referred to as the investigating official) may require any other member to cooperate in such an investigation" (Part I. E, Internal Investigations). Part I. E. 2. Investigative Procedures states that:

"In addition to any other authorized methods, investigating officials shall utilize the following investigative procedures when appropriate:

a. Interviewing departmental members.

(1) Members may be ordered to appear before the investigator at a reasonable time and place to submit to questioning and investigation."

This language indicates that internal affairs investigators have the authority to interview officials regardless of rank, and knowledgeable investigators, not the second in command in the department, clearly should have interviewed Assistant Chief Newsham in this instance. Not only would the interview have been more comprehensive, it would have precluded the conflict that exists given EAC Fitzgerald's presence during the arrests and the subsequent perception that the

role of his superior, Chief Ramsey, in the arrest order was off limits to the investigation.

In addition, EAC Fitzgerald's involvement in the investigation was a violation of MPD's Memorandum of Agreement with the Department of Justice on use of force. Section 80 of that agreement states:

MPD shall prohibit any officer who has a potential conflict of interest related to a pending investigation from participating in any way in the conduct of review of that investigation.

The interview conducted by EAC Fitzgerald was incomplete.

As indicated in the text above, Fitzgerald failed to ask questions drafted by the investigative team, including failing to bring forward the complicity of other senior officials in the decision to arrest individuals at Pershing Park.

The investigation and release of the final report were marked by evasions and misstatements by senior officials including Chief Ramsey, giving rise to the appearance of an attempt to cover up Chief Ramsey's role in ordering the Pershing Park arrests.

As indicated above, the evening of the Pershing Park arrests Chief Ramsey was asked by reporters about charges that the arrests were mishandled. In his written deposition issued October 10, 2003, Ramsey was asked, "When did you first become aware that citizens and arrestees were complaining about the legality of MPD actions surrounding the September 27, 2002 mass arrests at Pershing Park?" His response:

I became aware of the complaints concerning MPD's actions at Pershing Park after some members of the public testified at an October 23, 2002 hearing of the Committee on the Judiciary of the Council.

This answer fails to recall concerns brought directly to Chief Ramsey's attention at the September 27, 2002 press conference, as transcribed above, and the extensive media coverage that followed the arrests.

In response to another question from the October 10, 2003 written deposition, "Prior to the Council Committee on the Judiciary's receiving testimony on this matter on October 24, 2002, did you request or order any review of or investigation into MPD actions at Pershing Park?" Chief Ramsey replied: "A review is conducted after every major event in order to identify and solve any problems that occurred during the event."

This answer belies the fact that the after-action reports written following the Pershing Park arrests did not result in any official investigation. Chief Ramsey did not actually direct OPR to investigate allegations of illegal arrest and excessive force until November 12, 2002, after a November 6, 2002 written directive from Mayor Williams. The fact that OPR was not asked to investigate the Pershing Park arrests until after the testimony before the Judiciary Committee was substantiated by the deposition testimony of the officials who supervised and conducted the OPR investigation, including Inspectors Stanly Wigenton and Josh Ederheimer, Captain Matthew Klein, and Sergeant James McGuire.

This delay, in addition to questionable aspects regarding the conduct of the investigation itself, raises serious questions about MPD's ability to investigate allegations of misconduct in a timely, honest, and thorough manner.

The Department created a conflict of interest by assigning Assistant Chief Newsham, Director of the Office of Professional Responsibility, to an operational role during the September 2002 demonstrations, a conflict that continues to exist.

Despite the obvious conflict created by Assistant Chief Newsham having both operational and internal investigation responsibilities, since the Pershing Park investigation he has continued to have an operational role during demonstrations. In fact, Assistant Chief Newsham was an area commander during an anti-war demonstration on April 12, 2003, a day that generated five excessive force complaints to the Office of Citizen Complaint Review and another complaint to the Committee, the complaint from Margaret Luck that is discussed in the "Inauguration, Pepper Spray, and Self-Policing" section of this report. The Committee recommends that the practice of assigning the Assistant Chief of the Office of Professional Responsibility to operational duties during demonstrations cease immediately.

Recommendations:

Any questions about the legality of mass arrests, excessive force, or information indicating a violation of MPD policies contained in mass demonstration after-action reports should be automatically referred to the Office of Professional Responsibility and investigated immediately and thoroughly. This likely requires a more formalized interaction between the office of the Assistant Chief, Special Services, and the office of the Assistant Chief, Office of Professional Responsibility, following a mass demonstration.

Investigations of actions of Assistant Chiefs and the Chief of Police should be referred to the Office of the Inspector General and not handled internally by the Department.

The Assistant Chief of the Office of Professional Responsibility should not have an operational role during mass demonstrations.

MPD units and individuals outside of the Office of Professional Responsibility (OPR) should not participate in OPR investigations in any operational way.

Officials reviewing investigative reports should denote, in writing, their comments and recommended changes to reports and requests for further investigation, pursuant to MPD policy.



EMERGING ISSUE: SURVEILLANCE AND INFILTRATION OF DEMONSTRATION ORGANIZATIONS

At the time of the inspection of the convergence center described earlier in this report, MPD was just beginning to use undercover officers to monitor the planning and activity of individuals and organizations involved in demonstrations. MPD's use of undercover officers to monitor political activists has been controversial and is currently the subject of litigation. In the civil action, *Alliance for Global Justice, et al v. District of Columbia, et al*, the plaintiffs allege that "[a]gents posing as political activists infiltrated the demonstrators' organizations and informal groups." Plaintiffs object to this tactic as an unconstitutional form of domestic spying, reminiscent of the Federal Bureau of Investigation's COINTELPRO program during the Vietnam war and creation of the so-called "Red Squads."

This MPD practice has received surprisingly little public scrutiny beyond the current litigation and this Committee investigation. Both constitutional and public resource issues arise from the use of MPD officers to infiltrate and collect data on political organizations and represent serious public policy questions. As described earlier in this report, in 1975 and 1976, it was discovered that MPD was conducting surveillance of and maintaining files on local political activists, including former Councilmembers. The Council at that time held public hearings and introduced legislation on the matter, and MPD implemented reforms, including a new general order governing the practice.²³ The Council today, as it did then, has a responsibility to examine MPD's policies and practices in this area, consider the practices in a public forum, and determine and establish the appropriate policy for the District of Columbia.

The Committee examined MPD's use of undercover officers through the issuance of document subpoenas and by conducting depositions of Intelligence Unit officers and employees, including Sgt. Jeffery Madison; former Detective Neil Trugman; Craig Broyles, a civilian analyst; and Assistant Chief Alfred Broadbent. The Committee also conducted depositions of MPD officers who formerly worked undercover²⁴ in order to collect information on the plans and activities of political activists engaged in demonstrations.

Nature of Surveillance by Undercover Officers

The Committee found that the MPD conducted and does conduct surveillance of political organizations for the purpose of learning the nature and details of plans for upcoming demonstrations. MPD does this in different ways, but primarily by monitoring information that is publicly available on the Internet

²³ It appears that this general order is no longer in effect at MPD.

²⁴ The Committee has not released from executive session the names or any identifying characteristics of the former undercover officers deposed by the Committee.

and through other media; sending "plain" or "casual"-clothes²⁵ or undercover²⁶ officers to open meetings of organizers; and by conducting surveillance of organizations through the use of undercover officers.

In both his deposition and public testimony, Assistant Chief Broadbent objected to the Committee's characterization of the work of undercover officers as "infiltration" or surveillance. Assistant Chief Broadbent testified that undercover officers were merely attending public meetings, and that some undercover officers became friends with the organizers and stayed involved with activist groups because of those friendships.

Notwithstanding Assistant Chief Broadbent's effort to minimize the act of infiltration by referring to it as "attending public meetings," undercover officers participated in meetings and activities not as police officers, but as individuals pretending to be activists. They were instructed to and did create false names and fictional personal histories, and dressed in a manner to make them appear sympathetic to the various causes of activists. Using these false identities, they became active members of the organizations - attending meetings, sometimes taking on organizing responsibilities, and participating in demonstrations. Undercover officers, in the words of those former undercover officers interviewed by the Committee, were instructed to "absorb," "infiltrate," or "burrow" themselves into organizations. After undercover officers attended any event in the guise of their false identity, or had any other encounter with an organization, they documented information about the event, including what occurred, what was discussed and who had participated. Within twenty-four hours of the event or activity, this information was summarized in an "undercover officer report" or "UC report" that was then transmitted to MPD's Intelligence Unit. UC reports were then summarized by Craig Broyles and Sgt. Madison and submitted to their chain of command, including Assistant Chief Broadbent and Chief Ramsey.

In his deposition before the Committee, Assistant Chief Broadbent testified that he was aware that this activity took place, but that he does not believe it constitutes infiltration or surveillance. Assistant Chief Broadbent and

²⁵ A "plain-clothes" or "casual-clothes" officer, according to MPD policy and practice, is a police officer who does not wear a uniform but identifies himself or herself as a police officer. MPD general order 308.13 states that "members of casual clothes units must be identified as police officers by the general public, as well as other officers...Should it become necessary for casual clothes/non-uniform members to overtly exercise their responsibilities as police officers they shall, as soon as practicable, affix the standard recognition device, the yellow or orange MPD arm band, on the sleeve of their outer garment...Casual clothes members should also have in their possession their identification card and badge." Plain clothes officers may spend some of their time in uniform and some of their time out of uniform.

²⁶ Undercover officers assume false identities for the purpose of collecting information. Their identity as police officers is not known to the individuals they are monitoring or investigating or to a majority of MPD employees, and they are prohibited from having any contact with MPD facilities and employees, with the exception of a small number of Intelligence Unit officers. There is no MPD general order governing the conduct or operations of undercover officers.

Sgt. Madison testified that undercover officers were used not to collect information on the political beliefs or personal details of individuals, but to find out whether activists were planning illegal activity or activity that would affect public safety. Assistant Chief Broadbent testified that "the only information I'm seeking is information that would impact public safety... Police officers are told to attend the meetings to listen and observe and hear if there's anything that's going to have an impact on public safety in Washington because my goal is to keep the citizens of this city safe and to avoid a Seattle in Washington."

One former undercover officer testified that the goal of attending meetings was to get into meetings, see if groups were planning civil disobedience "or any other type of criminal activity" and to then focus efforts on those groups. Another former undercover officer testified that "the instructions were to attend the meetings, try to make friends, and try to find out who the key players are and keep our eyes and ears open for activity."

But the nature of the undercover officers' assignments, in reality, was much more intrusive than the limited purpose articulated by Assistant Chief Broadbent and Sgt. Madison. Undercover officers' monitoring of demonstrators was not limited to periods of time immediately before demonstrations or to events related to demonstrations. They monitored the activities of groups for up to a year at a time, and they monitored activities that went beyond the scope of planning for demonstrations or civil disobedience. Because they formed relationships with activists under the guise of their false identities, undercover officers often accompanied individuals on other group activities not related to demonstrations, and reported to the Intelligence Unit on these activities as well. One former undercover officer described the extent of its monitoring of activists this way:

A: There's many groups. And the same people frequent the different groups. You can have one person...[who] would be in four or five different groups. And once you make friends with the key people, they expect you to enter all the different groups with them...

Q: Let's say hypothetically, so I can understand this, you're in an undercover capacity so you have an identity that you have to maintain and you've developed friendships that you have to maintain. And this is beyond the meetings, you have to have social activities and so forth?

A: You become one of them.

Q: And if you're friendly with some of them, and let's say they go to an organization, I'm just going to throw this out there, say Martha's Table that provides food for people in the city and it's not

affiliated [with demonstrations]. But you would go with them to a place like that?

A: Yes, ma'am.

Q: And when you would go to these places, like homes and places that are plainly not affiliated... when you would make your reports about what you did that day, would you include all of these other references, even if they weren't directly related?

A: Yes ma'am. It's a running resumé of what I did for that day. Because I'm still accountable for what I do. Although I'm not at a district and I'm not pushing a scout car for eight hours, I'm still being paid for eight hours, and you still keep account of what you've done for that entire day.

Q: And in that account would you include, for example, new people that you met?

A: Yes.

Q: And you wouldn't necessarily know these people to be involved in or planning to be involved in a protest but you would still include them in the running resumé?

A: Yes, ma'am.

This exchange illustrates the broad scope and intrusiveness of the undercover officers' surveillance of individuals. It created a situation where the every day activities of individuals were reported to law enforcement, unbeknownst to them, regardless of whether the every day activities were criminal or even relevant to the planning of upcoming demonstrations.

No Policy Guidance Given to Undercover Officers

Despite the complex legal questions and extensive constitutional case law surrounding the surveillance of political activists in this country, each undercover officer interviewed by the Committee testified that such officers do not undergo any relevant training before beginning their assignments as undercover officers. Sgt. Madison confirmed that undercover officers do not receive any training before being deployed. In addition, between 2000 and December 2002, undercover officers were not provided with any written guidelines, general orders or other policy documents to follow while conducting surveillance. This is despite the fact that according to press reports from 1975 to 1976, then-Chief Maurice Cullinane issued a general order specific to this kind of activity. The

following is an excerpt of deposition testimony of former undercover officers received relative to this issue:

Q: So, to help me understand this, I want to see how much preparation you were given before you started... It was very minimal?

A: You were thrown in there.

Q: So they simply identified a group and said - Go.

A: Basically, yes...

Q: I take it then by what you said that neither Sgt. Madison nor your control officer told you about limitations in terms of not going into peoples' houses or things of that nature?

A: Oh no. Limitations were never discussed.

Sgt. Madison also testified that undercover officers were not given any written or even oral guidelines about what sort of activity or non-criminal information would be inappropriate to pursue, including, for example, personal information or information about religious beliefs.

Another former undercover officer was asked similar questions:

Q: Were you given any guidelines, written or oral, about the kinds of things you should be looking for or the activities you should be engaging in when you attended these meetings?

A: I was not provided anything in written guidelines. The only really oral guidelines that I received ... [included to] document any information that I had as a result of those meetings... I was told to participate at a level to where I would be accepted into the groups.

This testimony is supported by MPD's responses to document subpoenas issued by the Committee. The Committee requested all current policy documents, general orders and regulations relevant to handling demonstrations, as well as any relevant written policies that came out of litigation related to the May Day demonstrations in 1971 and the Council policy debate related to MPD's surveillance of political activists in the mid-1970s. Only one document provided to the Committee governs the activity or behavior of undercover officers, standard operating procedures (SOP) issued in December 2002.

This SOP was issued approximately two years after MPD began to use undercover officers to prepare for demonstrations. In public hearing testimony on

December 18, 2003, Chief Ramsey acknowledged that the SOP had not been formalized as a general order and that that step should occur.

Surveillance in the Absence of Criminal Activity

The December 2002 SOP also does not include policy guidance regarding the circumstances under which it is appropriate to use undercover officers to conduct surveillance. For example, there is no policy requirement that undercover officers be used for surveillance purposes only when there is a reasonable suspicion that individuals or a group of individuals are engaged in or planning criminal activity, though Sgt. Madison testified that this was the deciding factor in practice. While Assistant Chief Broadbent testified that undercover officers were only used for the purpose of collecting information about suspected illegal activity or activity that would affect public safety, testimony received by the Committee indicates that undercover officers were also used for months at a time to monitor nonviolent activists not engaged in criminal activity. The Committee further found that there was often no distinction made by MPD management and officers between minor acts of civil disobedience and criminal activity.

The Committee interviewed one former undercover officer who monitored the activities of a group of activists for several months, during which time the officer did not observe any criminal activity:

Q: When you were attending these meetings...did you ever have occasion to observe criminal activity?

A: No ma'am.

Q: At any point did you question whether your continued involvement with these groups made much sense?

A: Yes ma'am.

Q: And can you tell us what the reaction to your questioning was?

A: I went and met with the command staff of the intelligence division and explained to them ... other than civil disobedience I was not uncovering any criminal activity, such as what was seen in Seattle. I was not uncovering any plans for things of that nature.

On the other hand, each former undercover officer interviewed by the Committee clarified that there were several groups that they monitored that were nonviolent and not involved in criminal activity, but that associated with or supported individuals or groups involved in criminal activity. For example:

Q: At what point did you pretty much establish the fact that the group you infiltrated was not involved in any criminal activity, approximately?

A: The group as a whole was not, per se, involved in criminal activity other than civil disobedience, blocking the street, things of that nature. But, as a whole there were parts to that whole that I believed were either planning or capable of planning to carry out much greater acts of criminal activity. And that's where I was attempting to kind of feed myself and it just never matured.

Another former undercover officer testified about infiltrating a group that planned and implemented acts such as blocking sidewalks and intersections, slashing tires of police cars, and rushing businesses for the purpose of breaking windows and damaging merchandise. The same officer described a group's plan to take over a building, a plan that was ultimately foiled by MPD because of the information provided in advance by the officer. Each of the former undercover officers interviewed by the Committee testified that they believed that through their assignments, they were able to prevent disruption of the city during demonstrations by providing MPD with information that would not have been otherwise publicly available.

Nonetheless, the former undercover officers interviewed by the Committee testified that they never observed any violence or any criminal activity beyond minor property damage. They testified that they never observed the use of or planned use of explosives, molotov cocktails or weapons, either during demonstrations or at any other time. The one exception with respect to weapons was that some individuals were observed by the witness carrying the knives that were used to slash tires in the incident described above.

Assistant Chief Broadbent testified that the information gained through the use of undercover officers prior to the January 2001 Presidential Inauguration helped to prevent a "catastrophic event" in the District, but he declined to provide any additional details of this event or any other event prevented through the use of undercover officers, citing law enforcement privilege²⁷. More broadly, he testified that MPD was able to prevent planned property damage and violence to individuals by sending police officers to specific locations or individuals that were alleged to be targeted. Sgt. Madison testified that he believed the use of undercover officers prevented millions of dollars worth of property damage in the District, as well as the disruption of people's lives. He also said the work of

²⁷ The law enforcement privilege is an evidentiary privilege that does not apply to the Council of the District of Columbia, a coordinate branch of government, when it is acting pursuant to its investigative authority under section 413 of the District of Columbia Home Rule Act (D.C. Official Code § 1-204.13).

undercover officers prevented minor criminal acts from escalating into serious violence.

Maintenance of Information on Activists

Among the constitutional concerns related to law enforcement surveillance of political activists, in addition to concerns about the invasion of individuals' privacy, are concerns about what kind of information is collected on individuals and how that information is maintained. After revelations about the FBI's COINTELPRO program became public, it was discovered that the FBI was maintaining files on political activists based on constitutionally protected content, for example, political ideology, in the absence of criminal activity. Through the use of document subpoenas and deposition testimony, the Committee attempted to establish whether MPD has a policy of or is in the practice of maintaining files on individual political activists.

In response to requests through a subpoena for "All documents related to MPD's policy on the collection of information and maintenance of files of demonstrators," MPD responded that "We have not located any documents that are responsive to this request." In response to a request for copies of all records or dossiers on specific activists, MPD responded, "We have not located any responsive documents. If these persons were arrested, the department might have records of their arrests." The SOP on the use of undercover officers does not include any policy guidance on how to maintain information, or about what methods of maintaining information would be unconstitutional.

The former undercover officers interviewed by the Committee testified that the extent of their maintenance of files was limited to the UC reports that they submitted to their chain of command, as described above, and that they did not know what happened to those UC reports once they were submitted to the Intelligence Unit. They testified that they would record names of individuals involved in certain organizations in a general sense, but that they were not in the practice of identifying individuals and recording identifying information in detail. One former undercover officer testified to paying particular attention to and recording the activity of "key players" in the organization, or of individuals particularly antagonistic to the government and likely to cause "trouble" during demonstrations.

The Committee did receive testimony about a manual or book maintained by the Intelligence Unit that contains information, including some photographs, of demonstrators arrested during the April 2000 IMF/World Bank demonstrations. Both Craig Broyles and Sgt. Madison testified, however, that the information was limited to people with arrest records and that this practice was not repeated after April 2000 because it was too labor-intensive to do regularly.