

Both Sgt. Madison and Craig Broyles testified repeatedly that the Intelligence Unit does not maintain files or dossiers on individual political activists. Mr. Broyles testified that the only files he keeps related to activists and demonstrations are in the form of UC reports or "source material," including, for example, information from the Internet. Sgt. Madison gave similar testimony. They both testified that the information collected by the Unit in relation to demonstrations is event-driven and focused on activities, planned or actual, of activists. Sgt. Madison testified that after a demonstration has taken place, these files may be purged, depending on space needs in the office.

The Committee did review a sample of redacted memos submitted by the Intelligence Unit through the chain of command that were presumably based on UC reports. These memos listed general information about plans for demonstrations, including for example, the number of people expected to participate and whether any civil disobedience was being planned. Some memos do appear to include information about the activity of key organizers in certain groups.

Assistant Chief Broadbent also testified that the information he maintains is related to specific events, and that he does not keep track of individual activists. In his prepared testimony, however, he referred to a conference on civil disobedience held at American University in January 2000 which featured speakers who, he said, had been leaders of the demonstrations in Seattle the previous December. Asked by Special Counsel Mary Cheh how he knew that these individuals were leaders of the demonstrations when MPD did not keep dossiers on such individuals, Broadbent said, "We had met with Seattle authorities... We had discussed with Seattle who some of their key players were, and what worked, what didn't work for them. So we could learn from their mistakes and implement things they thought did work." With regard to the conference, he said police officers attended in plain clothes, "and from that they brought back information from individuals who said that they were involved in Seattle, what they did in Seattle, what you can do to overcome law enforcement, how you can bottleneck law enforcement."

Notwithstanding the testimony by MPD leadership that the department does not keep files on individuals engaged in demonstrations, the department's operational planning documents name specific leaders of specific organizations. While this information is already in the public domain (media, Internet) it also apparently is or was maintained in some form in order to be included in department planning documents. In the operational plan for the April 2000 IMF-World Bank meeting, the department described "Reclaim the Streets" as an international organization with local chapters pressing for more walking, cycling and use of public transportation. "Washington D.C. does not have a chapter, however, a representative from the New York City chapter, Chuck Reinhardt, has attended meetings of the Mobilization for Global Justice and plans to continue coming down on a regular basis," the plan notes. It also listed "key organizers" of

each major organization involved in the April 2000 demonstrations, noting in each case "no photo at this time."

In addition, a briefing for Councilmembers on March 29, 2000, included a handout with a page that listed a total of 10 names and affiliations of "key organizers" of the anti-globalization protests. Finally, an instruction also included in the April 2000 planning documents with reference to an event the weekend before the international meetings, states: "Photographs and video will be taken of individuals believed to be coordinators of the upcoming IMF/World Bank event."

### *Allegations of the Use of Agent Provocateurs*

Another concern about the constitutionality of the use of undercover officers relates to the potential for undercover officers to disrupt protected political organizing, either through their mere presence or through their actions. In civil action *International Action Center, et al v. United States, et al* (including the District of Columbia), the plaintiffs allege that MPD has a policy and practice of disrupting protected First Amendment activity through the use of *agents provocateur*. Related allegations have included the use of plain-clothes officers to initiate physical violence during demonstrations; and the use of undercover officers to pose as organizers and either encourage illegal activity within organizations, or take on organizing responsibilities that would then not be fulfilled.

Through testimony and a review of MPD policy documents, the Committee did not find any evidence substantiating that MPD has a policy of using undercover officers to disrupt political organizations in this manner. In fact, MPD policy as articulated in deposition and public hearing testimony is for undercover officers to observe rather than to participate.

Some of the deposition testimony of former undercover officers substantiated this policy directive in practice. One officer testified:

Q: So would that mean, if someone asked you to participate in planning, that you might do something like that?

A: ... Just a mild or medium level of participation. We were told not to participate in the actual tooth and nail planning of any type of civil disobedience or criminal activity but to gather information on those things.

The former undercover officers testified that they were never instructed by MPD officials, nor did they ever on their own, encourage illegal activity within the organizations they infiltrated. They also testified that they never intentionally disrupted organizations by not carrying out organizing responsibilities, though

one officer testified to being instructed by MPD officials to not undertake or fulfill any responsibilities that required illegal activity or acts of civil disobedience.

Sgt. Madison did testify that there was one incident in which an undercover officer made a statement in a meeting encouraging illegal behavior. Sgt. Madison testified that when this incident came to his attention through a UC report, he counseled the officer in question and instructed the officer to refrain from similar behavior in the future.

Beyond this example as described by Sgt. Madison, the Committee was not able to confirm with certainty whether there have been instances of *agent provocateur*-type behavior on the part of MPD officers in practice, as has been alleged. But the Committee has not investigated each of the allegations that has been made, nor was doing so part of the scope of the Committee investigation, which was more focused on questions of policy and general practice than on specific instances of misconduct. The Committee, nonetheless, is concerned that allegations of the use of *agents provocateur* have not been taken seriously or thoroughly investigated by MPD.

#### Findings:

#### **MPD assigned undercover officers to conduct surveillance of political organizations and activists in the absence of criminal activity.**

Though plans for some minor criminal activity, primarily property damage and plans to disrupt traffic, were uncovered through the use of undercover officers, the question remains for policymakers whether the extent or degree of activity justified the invasion of privacy and dedication of resources required to conduct the undercover operation. The Committee also found a troubling tendency of MPD officials and officers to equate nonviolent civil disobedience with serious criminal acts and threats to public safety.

The Committee has received testimony about the profound chilling effect the use of undercover officers has had on local activists in recent years, activists who have opened their homes and lives to police officers who subsequently reported on their daily activities. Considering the amount of serious violent crime that continues to plague the District and the overwhelming concern in neighborhoods about the need for a more visible police presence, the questions for policymakers must be: Should MPD officers be used in this way? And is it worth it? Having established that MPD did use undercover officers to conduct surveillance of political activists, the Council now has a responsibility to answer these questions with legislative remedies.

#### **MPD assigned undercover officers to conduct surveillance of political organizations and activists without giving those officers any relevant training**

**or policy guidance. MPD did not issue any guidelines in this area until December 2002, over two years after it started using undercover officers for this purpose. Current guidelines are not sufficient.**

Given the constitutional complexities and history associated with the surveillance of political activists, including a policy debate in the District in the mid-1970s spurred by similar MPD tactics, it was a significant failure on the part of MPD management to initiate such an operation without any policy guidance or instruction to those officers assigned to work undercover.

In addition, the two-page SOP issued in December 2002 is not as comprehensive as is called for given the legal complexities. There is no threshold provided as to when undercover surveillance of an organization is warranted, for example, that it should be conducted only when there is reasonable suspicion that an individual or organization is planning or participating in illegal activity. There are no instructions on what kind of information should be maintained on groups and individuals, including what methods of maintaining information are acceptable or may be unconstitutional.

**The Committee found no clear evidence that MPD maintains dossiers on individual political activists, but MPD does document political activity in the absence of policy guidance.**

MPD does maintain "running resumés" on the activities of individuals, in the form of reports that track the interaction of undercover officers with political activists. These reports summarize daily activities of individuals beyond planning for demonstrations without regard for whether the activities are criminal.

In addition, as noted above, there are no safeguards in place to prevent inappropriate collection of information on individuals. There is also no standardized method of purging information on individuals not related to criminal activity or plans for criminal activity.

Finally, notwithstanding MPD testimony on this point, it is not clear what the Intelligence Unit's policy is with respect to the maintenance of information on individuals actually engaged in serious criminal activity. MPD simultaneously claims that the Unit collects information by events, but also claims that some individuals are of concern because they engage in criminal activity. In the event that MPD has a legitimate concern about a particular individual it is not clear how information is stored in an easily accessible way to achieve MPD's stated goal of protecting public safety.

**The Committee found no evidence that MPD has a policy of using agents provocateur, though specific allegations of this kind of activity have not been sufficiently investigated.**

The most compelling allegation of the use of agents provocateur was the pepper spray incident described earlier in this report (see "Inauguration, Pepper Spray and Self Policing" section of this report). That instance alone should have prompted a thorough examination of individual officers' actions in this area.

Recommendations:

**MPD should conduct intelligence operations solely for a legitimate law enforcement purpose.**

**Before police undertake surveillance of any group engaging in constitutionally protected expression or freedom of association, there should be reasonable suspicion to believe that the group is engaging in, planning to engage in, or about to engage in criminal activity.**

**MPD should be prohibited from using undercover officers to conduct surveillance of individuals or organizations based solely on the content of their political speech or ideology.**

**Surveillance in this context should be expressly approved by the Assistant Chief for Special Services, be time-limited in duration, and be conducted in a manner that is not more extensive or intrusive than is justified by its purpose.**

**MPD should be required to have an internal oversight mechanism once an undercover operation is underway that, on a regular basis, reviews the activity of and information gained by undercover officers and determines whether undercover surveillance is still warranted.**

**Officers engaged in surveillance should report regularly to the Assistant Chief for Special Services. MPD should immediately cease such surveillance once facts made known to them no longer support reasonable suspicion.**

**MPD should be prohibited from maintaining files or dossiers on individuals in the absence of criminal activity and be required to purge files unrelated to criminal activity.**

**MPD should be prohibited from using *agents provocateur*.**



## **EMERGING ISSUE: FAILURES IN LEADERSHIP ACCOUNTABILITY**

One of the most serious findings of the Committee's investigation is a pattern of evasion and misrepresentation by Chief Ramsey and senior members of his command staff. In statements made on the public record over the last three years, in deposition testimony, in answers to questions posed in the course of U.S. District Court litigation, and in responses in the panel's public hearings in December, members of the senior ranks in the Department sought to evade direct answers to important questions and, in some instances, misrepresented the record and their role in Departmental actions.

Many of these examples have been described in earlier sections of this report. The gravity of this finding merits clear delineation of the record established by the Committee and that is the purpose of this section of the report.

Prohibited conduct for an officer of the Metropolitan Police Department includes making a false statement, an offense with a penalty ranging from 15 days suspension to removal. The definition of the offense, contained in the MPD General Order 1202.1 follows:

*Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence of any superior officer, or intended for the information of any superior officer, or making a untruthful statement before any court or any hearing. [emphasis added].*

The specific findings of misrepresentation and evasion follow.

**In February 2003 testimony before the Council Chief Ramsey denied that he had a role in the decision to arrest individuals in Pershing Park in September 2002.**

Once it became clear that the mass arrests made at Pershing Park on September 27, 2002, were and would remain controversial and bring criticism to the Williams Administration, Chief Ramsey and his immediate subordinates sought to minimize the chief's own role in the decision and the outcome. The following outlines Chief Ramsey's changing public statements with regard to the arrests at Pershing Park – first his statement the day of the arrests, then his response to direct questions at a Judiciary hearing on February 25, 2003, and finally an exchange with Special Counsel Mary Cheh during the December 18, 2004 hearing.

At a press conference in front of MPD Headquarters the evening of September 27, 2002, the day 647 demonstrators were arrested, approximately 400 of them in Pershing Park, with Mayor Williams and Deputy Mayor Kellems present, this exchange took place between a reporter and Chief Ramsey:

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 15<sup>th</sup> and Pennsylvania Avenue?" [southwest corner of Pershing Park]

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 15<sup>th</sup> Street..."

At a February 25, 2003 hearing before the Judiciary Committee Councilmember Patterson asked, "And whose decision was it to make the arrests in Pershing Park that day?" This exchange followed:

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."

Finally, Chief Ramsey was questioned about the arrests and the decision-making by the Committee's Special Counsel, Professor Mary Cheh, during the December 18, 2003 investigation hearing. The entire exchange is included.

Q: Assistant Chief Newsham describes his conversation with you as informing you and seeking your approval which he then got. Is that correct?

A: Well obviously, I have the authority to be able to override any decision that's made. Again, he did not have to seek it, but since I



was getting the briefing, part of that process would be if I felt something was amiss, I certainly would at that time tell him that's not the appropriate response for the Department and we wouldn't move forward. I didn't hear anything in that respect at all.

Ultimately, I'm responsible for everything. And the reason, when you're talking to a superior officer, the fact that they don't tell you to not move forward can be meant to mean that it's appropriate. It's ok.

Q: Well, it's nice to acknowledge, you know that generally you're the head of the department, and responsible for everything, the 'buck stops here' and that sort of thing. But I'm talking about the circumstances at that particular time. He told us that he informed you fully. He told us that he sought your approval. He told us that you gave your approval. Are you just saying that you just stood there passively and didn't countermand it? Did you give approval to make the arrests?

A: Excuse me, Ma'am. I think there's a need for me to just get one thing clear. I'm not generally in charge of the Department; I am in charge of the Department...

Q: Did you give approval to make the arrests?

A: And I would appreciate it, Ma'am. Excuse me, Professor...

Q: No, excuse me. Did you give the approval to make the arrests?

A: There's no... You're being rude Ma'am, and there's no need for that. I'm just simply responding to something that you said that I thought was a bit out of line. I've spent a considerable amount of my life getting to where I am right now and I refuse to let you or anyone else define me as a person or define this Department. That's why we're having this discussion. I told him that I thought that arrests were okay. That there was nothing wrong with what he was doing. Based on that at the time, I did not disapprove the arrests. Ultimately, the buck stops with me. He made a decision, I supported that decision and I didn't have the benefit of some of the information now. But based on what I saw at the time, I supported his decision 100%.

Q: So then, let me phrase it the way I wanted to phrase it. Did you approve of his decision to arrest the persons at Pershing Park?

A: Yes.

Chief Ramsey's final heated testimony on December 18, 2003, that he approved the order to arrest as commanding officer on the scene at the time, is something that he expressly denied nine months earlier. That admission has not been accompanied by any acknowledgment of the illegality of the arrests. Nor has the chief's superiors, including Deputy Mayor Kellems and Mayor Williams, taken action to hold the chief of police accountable for his role in what will likely be a costly as well as unconstitutional action, or for his misrepresentation of that role in earlier public statements.

**There has been a persistent effort by MPD leadership to exaggerate the numbers of and threat posed by anti-globalization demonstrators.**

Prior to the September 2002 IMF/World Bank demonstrations, Chief Ramsey told the Council and media that MPD expected 20,000 to 30,000 demonstrators that weekend. MPD's own operational plans indicate that MPD expected no more than 4,000 demonstrators (see "Pershing Park Arrests" section of this report).

After Fire/EMS and MPD shut down the demonstrators' convergence center in April 2000, Chief Ramsey and then-Executive Assistant Chief Terry Gainer told reporters that demonstrators were making homemade pepper spray and molotov cocktails. During an April 17, 2000 television story by *The News with Brian Williams*, Chief Ramsey stated "They were making homemade pepper spray." An April 15, 2000 Associated Press story reported "officers seized a plastic container with a rag stuffed inside and what looked like a wick, said executive assistant chief Terry Gainer. He said it 'looks like a Molotov cocktail.'" These statements are not corroborated in the Fire/EMS records on materials actually recovered at the convergence center, or by the testimony of MPD and Fire/EMS witnesses (see "Convergence Center" case study section of this report).

**Both Chief Ramsey and Assistant Chief Alfred Broadbent, Jr. expressly denied that the Department directed protesters into Pershing Park, yet the record shows that the opposite is the case.**

In testimony December 18, 2003, Chief Ramsey several times asserted that the Department had no information on plans for demonstrators to congregate in Pershing Park. "We don't know why they went to the park," he said, and, "We don't have any knowledge of where they were going to be."

Chief Broadbent, asked specifically if "the police were in any way funneling them or directing them" to Pershing Park, responded, "No we were not."

These statements contradict the intelligence included in the operational plan for the weekend and information shared by Chief Ramsey with

Councilmembers a week before the trade meetings that indicated that MPD knew the exact schedule of the demonstrators that morning. The statements are also contradicted by the Committee's investigation which found that a significant number of demonstrators were directed into Pershing Park by MPD officers (this finding is discussed in detail in the "Pershing Park Arrests" section of this report), as well as the record of MPD's own internal report on the Pershing Park arrests, in which officers interviewed described their own actions that morning to direct marchers and bicycle riders into Pershing Park. The version of the investigative report submitted to Chief Ramsey by the Force Investigation Team described police actions using the words "shepherded," "escorted," and "directed," which were changed to "monitoring," "followed," and "allowed" to reflect the absence of direction.

**Chief Ramsey testified that following the Office of Professional Responsibility investigation into the Pershing Park arrests, he implemented certain requirements in MPD policy and procedure, but some of those requirements have existed in MPD policy since 1978.**

At the Committee's December 18, 2003 hearing, Chief Ramsey testified that he directed that ten actions be taken "in order to more fully address the deficiencies identified during our internal investigation." The actions listed by Chief Ramsey included "tighter procedures on issuing warnings for crowds to disperse," and "the use of an operations log to document all actions taken during an event."

Yet the May 2003 SOPs on demonstrations issued by Chief Ramsey has language concerning both the issuance of warnings for crowds to disperse and the commander's event log is *identical* to the language on both subjects contained in the 1978 demonstrations handbook.

**Assistant Chief Brian Jordan testified he did not participate in discussions among command staff members prior to the arrests at Pershing Park, information contradicted by four witnesses, including three MPD officials in their sworn testimony.**

Several officials who were present at Pershing Park, including Assistant Chief Peter Newsham, Captain Andrew Solberg, Captain Ralph McLean, and U.S. Park Police Captain Rick Murphy, testified that Assistant Chief Brian Jordan was an active participant in discussions and operational orders given before and after the order to effect the mass arrest

U.S. Park Police Captain Rick Murphy, who was on the scene of the arrests at Pershing Park, was interviewed during the MPD Force Investigation Team (FIT) investigation into the Pershing Park arrests. Captain Murphy told FIT Sgt. James McGuire that he participated in discussions with Assistant Chiefs Newsham and Jordan before and after the decision was made to make a mass

arrest at Pershing Park. He stated that after the decision was made, Assistant Chief Jordan asked Captain Murphy to use his horses to push the protesters to the north side of the park, a request that Captain Murphy denied:

During the same FIT investigation, Captain Solberg told FIT Sgts McGuire and McCoy that upon arriving at Pershing Park, he met with Assistant Chiefs Jordan and Newsham and was told to take his CDU platoons and shut down the south and east sides of the park.

Assistant Chief Jordan testified, however, that he had no role in operations or discussions at Pershing Park. He testified that after arriving at Pershing Park from an earlier mass arrest scene at Vermont Avenue and K Street, NW:

I asked Chief Newsham did he need anything. He said no. I stood up there talking with Deputy Superintendent Huberman from Chicago for a while and then after that I got in my car and I left.

Assistant Chief Jordan was asked specifically about the statements of Captain Solberg and USPP Captain Rick Murphy, and he denied participating in those conversations. He testified that "the only conversation I had was, significant conversation was with Deputy Superintendent Huberman."

**Chief Ramsey and Assistant Chief Broadbent in Council testimony denied or sought to diminish the seriousness of alleged violations of the rights of political activists.**

During his deposition and public hearing testimony, Assistant Chief Broadbent refused to characterize the work of undercover officers assigned to monitor political activists as "infiltration." He testified that officers were merely "attending public meetings" to learn about the plans of demonstrators. Assistant Chief Broadbent's characterization of the work of undercover officers fails to acknowledge the extent or invasive nature of surveillance of activists. Former undercover officers testified before the Committee that, for months at a time, they assumed false identities as activists and became members of political organizations. In their words, they "infiltrated" organizations and reported to the Intelligence Unit on the daily activities of individuals. These reports were sent up their chain of command, including to Assistant Chief Broadbent.

In a November 14, 2003, deposition in the litigation, *International Action Center, et al, v. United States of America, et al*, Chief Ramsey repeatedly refused to answer a direct and straightforward question about ensuring that undercover officers do not violate civil rights. With apologies for the repetition, the efforts by the plaintiffs' lawyer, Mara Verheyden-Hilliard, to secure an answer are included here verbatim:

Q: What safeguards are put in place to make sure that the Constitutional rights of political activists are not violated by the use of intelligence officers infiltrating their organizing meetings and activities?

A: We're only concerned with any unlawful activities that may be taking place or being planned.

Q: But what safeguards are put into place with regard to the intelligence operations conducted by the MPD that involve assigning officers to infiltrate political meetings or assemblies?

A: Our officers are interested only in any unlawful activities that might be taking place or being planned by an individual or a group of individuals. Anything beyond that, we aren't concerned about.

Q: I'm going to ask you again, however, what safeguards are put into place by the Metropolitan Police Department to ensure that intelligence operations using Metropolitan Police Department officers to infiltrate political organizing activities do not violate the rights of political activists?

A: Again, we aren't concerned with the political positions of any group or individual. We are only concerned with unlawful activities that an individual or a group might be engaged in.

Public officials are responsible for their actions including providing information concerning the performance of their duties when questions are raised within a legitimate fact-finding setting, whether that setting is a D.C. Council hearing or a court proceeding. In the deposition quoted above, Chief Ramsey failed to meet even minimal standards for responding to legitimate questions. The end result: the chief of police of the District of Columbia presents himself as someone who dismisses the importance of safeguarding the Constitutional rights of political activists, fails to recognize the legitimacy of the judicial process, and fails to hold himself accountable for providing information in a legitimate setting.

**Senior officials in the Department displayed a pattern of evasion in their depositions by claiming not to recall certain events – claims that are implausible on their face.**

The same failure to perform the duty of a public official to account for himself and his actions within a legitimate fact-finding setting is evident in the next set examples as well. Some MPD witnesses persistently refused to answer even the most innocuous questions.

*Executive Assistant Chief Michael Fitzgerald*

Executive Assistant Chief Michael Fitzgerald, second in command in the Department, conducted the interview of Assistant Chief Peter Newsham about the arrests at Pershing Park as part of the FIT investigation. The inappropriateness of EAC Fitzgerald having conducted this interview, since he is outside of the Office of Professional Responsibility and since he was present and approved of the arrests at Pershing Park at the time of that decision, is discussed in the "Pershing Park Investigation" section of this report. The investigating officials provided EAC Fitzgerald with a series of questions to ask Assistant Chief Newsham during the interview. Several of his responses to questions about the decision for him to do the interview, and whether he received questions prepared by the sergeants who conducted the investigation, follow:

Q: Did you have a meeting that included the Chief of Police to discuss the taking of a statement from Assistant Chief Newsham?

A: I don't remember having a meeting with the Chief of Police, although that may have taken place because the Chief of Police is the only one who can – he had to instruct me to take a statement from Chief Newsham...

I remember – what I remember is not having a meeting about that....

But I don't know whether the Chief told me to take the statement or I got it from Terry Ryan, and I don't want to make assumptions that the Chief would tell me because Terry wouldn't tell me. But I don't recall the meeting. I'm not saying it didn't take place....

Q: Now, did anyone prepare for you a set of questions to use during that interview?

A: I don't remember getting any questions for the interviews. I'm not saying I didn't get questions, I just don't remember these questions.

*Commander William Ponton*

Commander William Ponton is Chief Ramsey's chief of staff, essentially controlling the paper flow into and out of the chief's office. He was asked about the meeting called by Chief Ramsey and attended by several senior officials at which Captain Klein of the FIT was directed to make changes and additions to the investigative report about Pershing Park. Exchanges with Commander Ponton follow:

Q: At that meeting you say you discussed Captain Klein's report. Could you recall the substance of those conversations?

A: No, ma'am.

Q: Do you know whether the report was gone over in detail or was it just gone over in general?

A: I don't recall the discussions at this point.

Q: Do you know how long the meeting lasted?

A: No. I don't recall that either.

Q: Did you recall yourself participating at all or were you just sitting there sort of observing?

A: I sat in the meeting. I don't recall having anything to say in the meeting. I did sit in the meeting. I simply don't recall what was discussed.

Q: So this is a meeting that was in January of this year on this report and you have no recollection of any matter that was discussed?

A: I don't recall the specific discussions.

Q: Well, could you recall the general discussions?

A: The report was discussed.

*Sergeant Michael Thornton*

Sgt. Michael Thornton also works in the chief's office as an administrative sergeant handling correspondence. He occasionally accompanies the chief of police as his driver, and, during recent demonstrations, as a provider of personal security for Chief Ramsey. He accompanied Chief Ramsey on September 27, 2002, including stops at two sites of mass arrests, at Vermont Avenue and K Street, and at Pershing Park. Questions and his responses to counsel questions about Pershing Park follow:

Q: Did you go from that location [Vermont Avenue and K Street] to Pershing Park?

A: I went to Pershing Park. The sequence of events I don't remember...

Q: Would you have walked from Vermont and K to Pershing Park?

A: Could be.

Q: Did you go back into the car?

A: From Vermont and K? I don't remember. I mean at some point I would have had to go, but I don't remember from that location or where we went next...

Q: At some point you left Pershing Park, did you not?

A: Yup.

Q: How did you leave Pershing Park?

A: I don't remember.

Q: When you got to Pershing Park you said one of your assignments was to keep an eye on the crowd, right?

A: Uh-huh....

Q: And you would do it to the best of your ability, correct?

A: I would, yes, ma'am.

Q: And you would be alert, right?

A: Uh-huh.

Q: And attentive, correct?

A: Uh-huh.

Q: Okay. So now you're at Pershing Park and tell us having been alert and attentive, what do you see?...

A: Demonstrators standing around, police officers standing around, and a lot of horses. I was in back of the horses... I wasn't right beside the Chief there. So, you know, I felt like it was a safe situation, that I didn't feel like that he was, his personal safety was in, I didn't feel his personal safety was in danger at the location...

Q: Was it an unruly crowd?



A: Was it – what do you mean unruly? What do you mean?

Q: Were there skirmishes? Were people pushing and shoving? Was it loud? Did it seem out of control? What was your assessment? You're a police officer, I assume you can make assessments about the nature of circumstances you find yourself in, so I'm asking you to describe them for us.

A: I was behind the line of horses and I did not feel that there was a threat to the Chief of Police...

Q: Did you see him confer with others?

A: He was standing in close proximity to other police officers but I don't know who they were. I mean, they could have been line officers, they could have been park police. I mean, I don't know. I don't remember who they were. I don't recall any specific person that he spoke to at that location.

Sgt. Thornton also was asked about the arrests. Despite the fact that approximately 400 people were arrested while he stood at the corner of 14<sup>th</sup> Street and Pennsylvania Avenue, Sgt. Thornton testified that he could not remember any specific details about those events. His responses:

Q: When you arrived there – were arrests being effected yet?

A: I don't recall any arrests, being on the scene for arrests...

Q: You don't recall any arrests at Pershing Park on Friday September 27<sup>th</sup>?

A: You know, I've learned through the media reports that, yeah, there was numerous arrests, but I don't recall seeing anyone being arrested...

Q: We've see news footage of you and Chief Ramsey removing the bicycle of an arrested demonstrator from Pershing Park. Do you remember that?

A: Me removing a bicycle from Pershing Park? No. But, okay.

Q: You were removing it from someone who had been arrested and I ask to see if that would jog your memory to see if you remembered people being arrested at Pershing Park.

A: [no answer]

In closing, it should be noted that the Committee did receive testimony from several MPD officers and officials who took the Department's guidelines on false statements and the role of the Council's investigation very seriously. These witnesses provided truthful and careful testimony, some perhaps at risk to themselves and their careers and despite a climate of fear within the department that does not encourage such cooperation. To those witnesses, the Committee extends its admiration and gratitude.

## EMERGING ISSUES: DEPARTING FROM BEST PRACTICE IN MANAGING DEMONSTRATIONS

From the late 1970s until 2000 the Metropolitan Police Department enjoyed a reputation for professionalism in handling the hundreds of demonstrations that took place in the nation's capital. In their testimony December 17, 2003, former Deputy Chief of Police AND Commander, Special Operations and Traffic Division, Robert Klotz and former ACLU legal counsel Ralph Temple recounted the history of difficult, challenging events monitored and managed by MPD without major controversy during that period: the "tractorcade" of farmers camped on the Mall for close to a month in 1978; marches by Iranian students in the 1980s in the midst of strong anti-Iranian sentiment in this country; the Million Man March in 1995 that was a major public concern based on the sheer number of participants. These large-scale events were opportunities for the department to present itself as a best-in-class agency, well-trained and well-lead. A major conclusion by the Committee, underscored by the two witnesses, is that the Metropolitan Police Department today is not what it was in the immediate past, with potential repercussions for the future. Temple's testimony on this point:

If you go back to May Day, 1971, they had a real difficult thing to deal with. A hundred thousand demonstrators, threatening to close down -- that's darn tough; it can be done; but it is tough. This current police management hasn't had a tough one to deal with. April 2000 there were 15,000 demonstrators; September 2002, only two or 3,000 demonstrators. It would have been such an easy demonstration to do it right...But they couldn't restrict themselves to arresting only violators of the law.

If the MPD was faced tomorrow with managing a controversial political protest event that drew close to 100,000 persons -- as was the case on May Day, 1971 -- there is nothing in the record of the last four years to indicate the department could respond successfully. This is a serious concern for District residents and a serious concern for all who wish to exercise their First Amendment rights in the nation's capital. A discussion of the specific issues in managing demonstrations follows.

### *Command and Control*

Prior to the IMF/World Bank meetings in April 2000, MPD rarely mobilized the full department to prepare for demonstrations. Since mass demonstrations requiring full mobilization have become more regular in recent years, Chief Ramsey has implemented changes in the command and control structure to accommodate full mobilization. The overall effect of these changes has been the dilution of civil disturbance unit (CDU) expertise and a weakening of effective incident command and management.

According to deposition and public hearing testimony, over the last twenty years, it was typical to have the Special Operations Division (SOD) Commander act as the field commander during mass demonstrations. The SOD Commander typically had extensive career CDU experience<sup>28</sup> and fulfilled the role of incident commander during demonstrations, making final decisions about the deployment of manpower and the initiation of mass arrests. The SOD Commander also typically relied on assistance from captains and lieutenants with similar career CDU experience.

More frequent full mobilization of the Department since 2000 has lead MPD to rely on the entire command staff during demonstrations, and Chief Ramsey has designed a command and control structure in which the demonstration area is divided into quadrants, with each quadrant and its civil disturbance officers and officials being commanded by an assistant chief. This has resulted in incident commanders being designated as a result of their rank, rather than the extent of their CDU experience.

The original version of the report of MPD's Force Investigation Team investigation into the Pershing Park arrests contained a finding, noting that:

Currently, most commanders and assistant chiefs are placed in charge of quadrants in which mass arrests are likely to take place. Numerous command officials do not possess the experience in handling complex civil disturbance events. Moreover, the majority of officers graduating from the Institute for Police Science undergo a weeklong training curriculum in civil disturbance. In some cases, this leads to an undesirable, even detrimental situation in which many officers and supervisors possess more knowledge and training than the official in command.

This recommendation was removed from the report prior to its transmittal to the Mayor and Council. Nonetheless, the Committee reached the same conclusion. Asked about this phenomenon of relatively unseasoned command staff members making important tactical decisions in the absence of extensive CDU training, Assistant Chief Alfred Broadbent indicated that the CDU captains and lieutenants have a responsibility to speak up and advise assistant chiefs on field decisions on the basis of their own CDU training and experience during mass demonstrations. This assertion during his deposition belies the environment that exists within the department such that challenges to a superior officer are not merely ignored but could be punished, formally or informally. For inexperienced command officials to routinely rely on more experienced subordinates requires agency management that is more open and self-critical than is the case with MPD today.

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<sup>28</sup> The use of the term "career civil disturbance unit experience" means officials who, throughout their careers, were members of CDU platoons, regularly were assigned to handle mass demonstrations, and participated in annual blocks of CDU training.

The change in command structure instituted under Chief Ramsey has also, according to after action reports dating back to April 2001, resulted in general command and control confusion, and what has been labeled by many witnesses as akin to the "too many cooks in the kitchen" syndrome. Also, as one commander put it, the command structure has become so tall, that the upward flow of information from officers to command officials gets distorted. Contributing to this problem is the expansion of MPD's Joint Operations Command Center, where an incident commander, typically the Assistant Chief of Special Services, manages support resources and the movement of CDUs. An after action report submitted by Commander Willie Dandridge after the September 2002 Pershing Park arrests is typical of other comments on this issue from after action reports and testimony. Commander Dandridge noted:

Command and control are essential during details, especially during a tactical response. I was unsure of who was actually in charge. Deployments and assignments were generated from the JOCC yet would be countermanded by the A/C in charge of a specific area, reiterated by the command bus, and countered by the A/C in charge. Though a definitive answer as to whose decision would stand may have been predetermined, the contradictions lead to doubt as to how to react.

#### *Crowd Management/Arrest Procedures*

As described in more detail in the "Demonstrations in the District of Columbia" section of this report, in 1978, following the May Day litigation, MPD issued guidelines on mass demonstrations. In addition to these guidelines, MPD uses an operational plan for each mass demonstration that outlines policy and detailed operations for specific events.

The Committee reviewed several versions of MPD's guidelines in place during the last 25 years, as well as various operational plans, and examined their implementation through the case studies described earlier in this report. The Committee drew three major conclusions from this review. First, the tone of MPD's policy has shifted in recent years towards the assumption that demonstrators are likely to break the law or cause civil disturbances, and in some instances has moved away from court recommendations in the 1970s. Second, the primary elements of MPD's articulated policy for handling demonstrations, which emphasize the protection of First Amendment rights, the use of arrests as a last resort, and de-escalation with respect to crowd management, are generally sound. Third, MPD has strayed from its articulated policy in recent years during mass demonstrations where there is a potential for civil disobedience.

During his public hearing testimony, Robert Klotz, who served as deputy chief of police of the Special Operations and Traffic Division following the May Day era litigation, expressed concern about a tendency of police departments in

recent years to blur the line between protecting demonstrators' rights to demonstrate and managing civil disturbances. "A parade and a demonstration is not a civil disturbance," he said during the December hearing, "and a civil disturbance is not a parade or a demonstration." He indicated that the effect of this blurring has been to encourage overreaction by police and an escalation of tension. He said using a show of force, such as a large number of officers or a police line, is a legitimate tactic in a civil disturbance. "But a show of force in a demonstration is ill-advised," Klotz said. "If you use a show of force in a relatively peaceful demonstration you are actually setting a tone that I don't think the police should be setting."

This concern was reiterated by Timothy Lynch, Director of the Cato Institute's Project on Criminal Justice, who testified that American police departments over the twenty years have become more "militarized" and the rights of individuals have suffered as a consequence. The military mission, he said, is to maximize use of force, while the police mission is, or should be, to use the least amount of force.

The shift referenced by Mr. Klotz and Mr. Lynch is evident in the evolution of MPD's mass demonstration policy between 1978 and the present, and can be demonstrated by comparing the 1978 handbook and the current SOP. This is most obviously reflected in the change of the names of the documents. The 1978 manual is called the *MPD Handbook for the Management of Mass Demonstrations*. The 2003 SOP issued by Chief Ramsey is called the *MPD Standard Operating Procedures for Mass Demonstrations, Response to Civil Disturbances & Prisoner Processing*.

The introduction to the guidelines, their articulated purpose, and their statements of policy reflect this same shift. For example, the following is the statement of policy in the 1978 handbook:

It is the statutory responsibility of the MPD to preserve the public peace, to prevent crime and arrest offenders, and to protect the rights of persons and of property. It is the policy of the Metropolitan Police Department during mass demonstrations to preserve the peace while protecting the rights of demonstrators to assemble peacefully and exercise free speech. In fulfilling its responsibilities during mass demonstrations in which demonstrators engage in unlawful conduct, the MPD will make reasonable efforts to employ non-arrest methods of crowd management as the primary means of restoring order. Should such methods prove unsuccessful, arrests shall be made for violations of the law. All arrests shall be based on probable cause, and arresting officers shall use only the minimum necessary force to make and maintain arrests. To the extent possible under the circumstances, arrests shall be made in an organized manner by units at the direction of an official, and shall be fully documented. Prisoners

shall be safeguarded and adequately cared for, and shall be expeditiously processed for court or released.

The statement of policy of the 2003 SOP is almost identical to the statement above, yet has subtle and significant changes, which are noted inside the text below. Note the deletion of the qualifier included in the 1978 document that crowd management is necessary when there is unlawful conduct within a mass demonstration, changed to an inherent assumption that, during mass demonstrations, MPD will have to manage the crowd and restore order:

It is the statutory responsibility of the MPD to preserve the public peace, to prevent crime, and arrest offenders, and to protect the rights of persons and of property. ~~It is the policy of the Metropolitan Police Department during~~ As part of this responsibility, the department provides trained personnel to respond to the scene of mass demonstrations and civil disturbances in our city in order to preserve the peace while protecting the First Amendment rights of people demonstrators to assemble peacefully and exercise free speech. ~~In fulfilling its these responsibilities, during mass demonstrations in which demonstrators engage in unlawful conduct,~~ the MPD will make reasonable efforts to employ non-arrest methods of crowd management as the primary means of restoring order. Should such methods prove unsuccessful, arrests shall be made for violations of the law. All arrests shall be based on probable cause, and arresting officers shall use only the minimum necessary force to make and maintain the arrests. To the extent possible under the circumstances, arrests shall be made in an organized manner by units at the direction of an official the Chief of police or his/her designee, and shall be fully documented. Prisoners shall be safeguarded and adequately cared for, and shall be expeditiously processed for court or released.

It appears that these specific changes occurred some time between 1978 and 1996, as they are also reflected in the 1996 edition of the handbook, the *MPD Manual for Mass Demonstrations and Responding to Civil Disturbances*.

The Committee also found instances of new language inserted into the 2003 manual that appears to stray from the intent of May Day era court rulings. For example, there is new language in the 2003 SOP regarding the documentation of information surrounding mass arrests. One of the courts' most significant criticisms of MPD during the May Day litigation concerned MPD's suspension of the use of its field arrest forms during mass arrests in 1971. The 2003 SOP makes repeated references to the importance of this issue of documentation. But it also includes new language that allows this process to be suspended:

Documentation. During mass demonstrations and civil disturbances, every reasonable effort shall be made to document every arrest to the extent allowable under the circumstances and consistent with the department's responsibility to protect life and property and to prevent unlawful conduct.

- (1) Under normal circumstances Field Arrest Forms or other administrative devices or procedures, as ordered by the Field Commander, shall be used by members for recording information necessary to establish probable cause.
- (2) The Field Commander may delegate to unit commanders the authority to temporarily abbreviate or suspend normal field documentation procedures, when such action is the only available resource for the protection of lives and the prevention of major property damage. As soon as conditions allow, however, the Field Commander or the unit commander, as the case may be, shall direct the reinstatement of normal field documentation procedures.

The 2003 manual also includes language, dating back to 1978, requiring unit commanders to keep "commander's event logs." This reflects another policy regarding documentation that has been ignored in practice in recent years. These logs are required to record occasions requiring "the use of force; tactical orders issued to personnel; orders received from higher authority; significant acts on the part of the demonstrators; incidents involving mass arrests; and complaints alleging serious police misconduct." The only commander who maintained an event log during the September 2002 demonstrations was Assistant Chief Brian Jordan. In response to a written deposition issued by the Committee that asked whether commander's event logs were used during mass anti-globalization demonstrations in recent years, Chief Ramsey stated:

The Mass Demonstration Event Logs were not used for the listed events. Commander's Mass Demonstration Event logs have taken the form of the running resumés produced by the department's Joint Operations Command Center.

The running resumé produced in the Joint Operations Command Center does not provide an eye-witness account of the circumstances surrounding a mass arrest, a form of record-keeping that is required of commanders and arresting officers in order to establish probable cause and to defend arrests in court.

Aside from the overall shift in tone and questionable additions to the 2003 SOPs, several aspects of MPD's articulated policy for handling mass demonstrations are sound. As the statement of policy quoted above states, non-arrest methods of crowd management are preferred. This policy was re-iterated by the deposition and public hearing testimony of several MPD witnesses.



MPD's use of force policy, consistent with the 1978 policy, states that "in managing a crowd, the policy of this department is to use the least stringent force necessary... The application of force by a unit or element of it shall be immediately discontinued upon a determination by the ranking official on the scene that the condition, which required the use of force, has been alleviated." The 2003 SOP requires that all instances of use of force be documented.

The 2003 manual also includes language dating back to 1978 that requires the collection of information necessary for advanced planning for demonstrations, and encourages negotiations and communication with demonstration organizers as far in advance of demonstrations as possible. It emphasizes using only the level of manpower that is necessary for the threat level associated with the demonstration, and encourages officers to remain neutral and not engage in "demonstration-related discussion with participants" or to respond to verbal harassment from demonstrators. It warns that officers who "attempt to avoid identification through removal of the badge or name plate will be considered a violation of department orders and will be dealt with accordingly."

Finally, the 2003 SOP includes language identical to language in the 1978 handbook that allows use of a police line:

Whenever it becomes necessary to isolate an area in which large scale unlawful activity is occurring or has the potential of occurring ... A police line may be established at the direction of a unit commander to prevent damage to a specific target, such as a building, a utility or a business area... Police lines shall not be used to impede the movement of a crowd when there is no potential for unlawful activity.

The manual only allows for crowd dispersal:

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, where time and circumstances permit, to issue warnings to the crowd to disperse.

As described earlier this report, MPD policy requires a series of clearly audible warnings before officers can make arrests.

While MPD may have articulated sound policies in important areas, including in the area of crowd management, the department has violated its own policies on several occasions in recent years, usually during mass demonstrations with a potential for civil disobedience. For example, as already discussed in the "Pershing Park Arrests" section of this report, MPD did not give warnings before conducting mass arrests of nearly 600 demonstrators in 2002.

Also, according to the testimony of public witnesses and some MPD witnesses, MPD increasingly has used police lines to surround and detain demonstrators over the last four years as a means of crowd control, rather than as a means of controlling the potential for violence, or as a means of conducting a mass arrest. This tactic of "trap and detain," has at times kept demonstrators detained for considerable lengths of time, against their will. It should never be used on nonviolent demonstrators or in the absence of the potential for unlawful activity. To do so is a violation of current MPD policy and is arguably tantamount to, at best, disruption of individuals' First Amendment rights to demonstrate and, at worst, false arrest.

#### *Command Staff Attitude*

Another element in the movement by the department away from best practices has to do with attitudes adopted or learned toward demonstrators themselves. Senior leaders, notably Assistant Chief Alfred Broadbent and Assistant Chief Peter Newsham, made startling comments in their deposition testimony when describing the political activists who lead and participate in demonstrations. Assistant Chief Newsham described the briefings prior to the September 2002 demonstrations: "There was a lot of talk and a lot of information that was shared with us regarding the anarchists. They're out on the West Coast and they were largely responsible for the problems that they had in Seattle."

Assistant Chief Broadbent essentially said in his deposition that he could tell by looking at a demonstrator that he or she will commit a criminal act. He testified:

A: This is where we talk about the face of demonstrations changing. Because if you want to come to protest in Washington, why are you bringing the gas mask. Why are you bringing the bandana to cover your face. Why are you wearing garments to conceal your identity. If you're doing those type of things, you're not coming to protest, you're coming to engage in some type of civil disobedience.

Q: You're saying that those attributes target that person as a person who is likely to commit a criminal act?

A: There's a reason why they're hiding their identity. And it's not because it's hot or cold. Someone who wears a bandana over their face and covers everything but their eyes is doing that for a reason.

There are two points here. Demonstrators have had cause in the past to fear police use of pepper spray and will explain that they are advised, and advise others, to wear or carry scarves and other apparel to cover the face if necessary to

avoid inhaling chemicals. Second and more significant: basing a police decision to arrest or detain merely on the appearance of one or more individuals represents a form of profiling and runs counter to departmental policy as well as case law.

In his deposition and public testimony, Assistant Chief Newsham said he believed the crowd at Pershing Park was dangerous. Other contemporaneous descriptions indicated otherwise. A television reporter, in a live report as the bicyclists arrived at Freedom Plaza and officers surrounded Pershing Park, said, "They've surrounded this group here... We have a lot more police officers than demonstrators... No violence, no incidents here other than chanting and placard carrying here at Pennsylvania as reinforcements come in to help police officers surround and contain this group<sup>29</sup>."

The department's own videotape of the scene at the park showed a number of persons to be colorfully dressed, but gave no indication of any menace present in the crowd, either through the presence of any kind of weapons or angry expressions on those in the crowd. To the contrary, the MPD tape repeatedly shows participants anxiously asking to be released from the park. During his deposition, Assistant Chief Newsham was asked to explain his belief that there was danger present in Pershing Park.

Q. Let's just take 2002, the people that were arrested, they were not exhibiting the behaviors as far as you know that you saw on those films in Prague or Seattle.

A. Right. I think they were very close to exhibiting those behaviors. I really do. The crowd that I dealt with that Friday seemed a lot more aggressive. They seemed a lot more reluctant to obey police direction. They had actually engaged in some destructive behavior. They had broken a window that I knew of. They had been turning over newspaper things and trash cans. I had never seen that in any of the other ones, not me personally. I had not.....

Q. Were they peaceful?

A. Not particularly aggressive.

Q. Did you notice any violence?

A. No.

A few minutes later in the deposition Chief Newsham asked to go back to recount other thoughts he had during the Pershing Park arrests:

<sup>29</sup> Dave Statter, Channel 9, WUSA News, September 27, 2002

I pictured in my mind because of the things I had seen, the things that I had heard, that we would have a situation very similar to the things that I saw in Seattle because if you watch the films from Seattle, that's what you see. You see small splinter groups of people coming through the street very aggressively and doing types of things like knocking over and what happened [in Seattle] was I think the police didn't react to that at all and it built up and a mob mentality developed and the next thing you know we had all kinds of destruction of property. And I felt that the same things were going to happen in the District so I thought I had probable cause to make the arrests....and I still think that if they had been allowed to leave the park that we would have had a lot of problems in the city.

Assistant Chief Newsham's own perception of danger inherent in the scene at Pershing Park indicates a lack of knowledge and expertise in crowd management – a lack of the level of expertise former SOD Commander Robert Klotz brought to the job, for example.

Other images of MPD officers captured on videotape of demonstrations in September 2002 and April 2003 show officers visibly nervous – repeatedly rapping a palm with a baton, for example, or shifting from one foot to another while manning a police line. That image contrasts with the description former SOD Commander Klotz provided of MPD officers holding up even when hit with eggs and other missiles aimed by onlookers at Iranian students engaged in protest marches in the 1980s. To be sure, the videotape images do not represent the vast majority within the Department who take their CDU training seriously and perform professionally. But the possibility that unseasoned officers are made anxious by command staff rhetoric is worrisome. "If you don't have competent officials, and competent, well-trained officers, your plans are relatively worthless," Klotz testified.

### *Findings*

**Under current leadership, the Metropolitan Police Department has failed to effectively manage controversial political demonstrations, giving rise to concern about its ability to manage these events in the future.**

### *Recommendations*

**Consistent with the original office of Professional Responsibility Pershing Park report as submitted to Chief Ramsey, all police executives need to be CDU trained or re-trained. It is important that those charged with incident command during demonstrations be those most experienced in crowd management.**

**MPD should streamline its communication structure during mass demonstrations so that one Incident Commander is consistently making field command decisions.**

*Prisoner Processing & Use of Restraints*

Ideally, MPD would not conduct mass arrests on a regular basis. But in the event large numbers of arrests are necessary, MPD should have the capacity to process prisoners in a reasonable amount of time. According to after action reports dating back to April 2000, technological problems have consistently plagued MPD's mass arrest prisoner processing, resulting in unreasonable lengths of detention for those arrested during demonstrations.

Most recently, a breakdown in the Criminal Justice Information System (CJIS) caused delays in the release of those arrested on September 27, 2002, and some prisoners who chose citation release as a release option were detained for up to 36 hours. The Committee reviewed the after-action reports of MPD's IT staff following the September 2002 protests. There was no consensus on the exact cause of the problem, but based on the after-action reports, it seems to have been narrowed down to a routine test of the CJIS system conducted that night, a damaged wireless antenna, or an overload caused by the media feed in the Joint Operations Command Center. Obviously, routine technology tests should not be conducted at a time when there is the potential for mass arrests. In any event, the exact cause of the problems needs to be diagnosed and addressed so unreasonable delays are not repeated in the future.

Beyond technology problems, individuals arrested for misdemeanor offenses, the vast majority of whom will opt to post and forfeit or choose citation release, should never be detained for more than a few hours.

The Committee received testimony from multiple public witnesses and numerous other complaints alleging that MPD offered either an incomplete range of release options or inconsistent fines for those arrestees opting to post and forfeit. During the processing of prisoners in September 2002, according to testimony, arrestees were either presented with no choice but to post and forfeit, or urged by MPD officers to choose the post and forfeit option as a matter of convenience. Arrestees were also apparently told to pay inconsistent fine amounts.

MPD's revised mass demonstrations SOP released in May 2003 has detailed instructions on prisoner processing, including instructions tailored to each release option. In the future, this policy should be closely followed. In addition, clear, written guidance should be given to both MPD officers and civilian staff running the prisoner processing sites, as well as to those arrested. This guidance also should be clearly posted in prisoner processing sites where prisoners can see the information.

MPD's mass demonstrations SOP also has detailed instructions regarding prisoner property, presumably based on District of Columbia law and regulation. It requires a system in which a prisoner's property essentially follows the prisoner and is tracked through the use of field arrest forms. Unfortunately, this policy was not followed in September 2002 and many pieces of prisoners' property at the end of the detail were either missing or destroyed. Again, in the future, MPD policy and District law in this area should be closely followed.

In November 2003, the Citizen Complaint Review Board released a "Report and Recommendations regarding Disorderly Conduct Arrests Made by Metropolitan Police Department Officers." Among the reports findings was that the post and forfeit process, through which an arrestee pays a fine and forfeits his or her opportunity to appear in court to answer the charge, "is not specifically authorized by statute, regulation, or court rule," and that:

The consequences of collateral forfeiture are not clear...the Department does not appear to have [a general order] that sets out the procedures for processing a collateral forfeiture. Other than a receipt for payment of the collateral, the station staff does not complete any paperwork, require any acknowledgement by the arrestee of the choice to post and forfeit collateral, or give the arrestee any paperwork that explains the collateral forfeiture process or any related information<sup>30</sup>.

Implementation of CCRB's recommendation that MPD clarify its post and forfeit process would provide more explanatory information to arrestees about their rights, and greater accountability for MPD in terms of tracking the large amount of cash that is collected as a result of post and forfeiture during mass demonstration situations.

In September 2002, arrestees were held in the prisoner processing center with their strong wrist tied to the opposite ankle in such a way that they were not able to stand up or stretch out. The length of time individuals were retained exacerbated the discomfort of arrestees. Retired Lieutenant Colonel Joseph Mayer, who was 69 years old at the time of his arrest, was held in this manner from approximately 3 a.m. Friday night until 1 p.m. Saturday.

MPD's investigation into the Pershing Park arrests found that this method of handcuffing prisoners was justified because officials at the prisoner processing center needed a way to maintain control over hundreds of demonstrators whom they believe had the potential to start to protest or become unruly. MPD further found that the handcuffing technique was not a violation of general order 502.1 (Transportation of Prisoners), because arrestees' arms and legs were not tied

<sup>30</sup> p. 16, "Report and Recommendations regarding Disorderly Conduct Arrests Made by Metropolitan Police Department Officers," Citizen Complaint Review Board, 2003

together in such a way that they could not sit up or move. General order 502.1 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 Committee, nonetheless, finds this method of restraint to be insupportable and particularly so in circumstances when nonviolent, misdemeanor arrestees are held for unreasonable lengths of time. Former Interim Corporation Counsel Arabella Teal defended the use of restraints on prisoners binding wrist to ankle following the September 27, 2002, arrests based on the large number of persons arrested and the shortage of officers to stand guard at the detention center to assure their safety. While a justification from the police department's perspective, use of uncomfortable restraints against nonviolent demonstrators is not a substitute for effective law enforcement planning and sufficient manpower to provide reasonable supervision of arrestees.

*Recommendations:*

**MPD should evaluate its technological capacity for handling a large volume of prisoners, include information technology staff in planning prior to events with a potential for mass arrests, and periodically conduct exercises to test this capacity.**

**MPD should release people charged with offenses for which citation and immediate release are appropriate within a reasonable period of time. If prisoners are held beyond four hours, MPD should document the reasons for the delay.**

**MPD should provide arrestees with written descriptions of release options that include a complete range of options provided by District of Columbia law and regulation, arrestees' rights under the law, and accurate information about fine amounts.**

**MPD should follow its policy and District of Columbia law regarding the collection, maintenance and distribution of prisoner property.**

**The Committee endorses the Citizen Complaint Review Board's recommendation that MPD modify its arrest procedure to ensure that all citizens who pay to resolve their arrest through post and forfeit are provided with written notice about the collateral forfeiture process and its consequences and that they sign an acknowledgment of their choice to pay the collateral.**

**MPD use of physical restraints against individuals arrested during mass demonstrations should be limited to what is reasonably necessary to secure and control them.**

*Role of the Office of Corporation Counsel*

Given the litigation against the city that has followed mass demonstrations in recent years, it is critical that an attorney familiar with MPD mass arrest protocols and related legal and constitutional thresholds be on the ground with MPD commanders during demonstrations. When practical, attorneys should participate in decisions about mass arrests. According to Robert Klotz, it was MPD practice during the late 1970s and early 1980s to have attorneys present during mass demonstrations. MPD's 2003 mass demonstration SOP states that the MPD General Counsel "shall provide field assistance to the Chief of Police and other field commanders, and perform liaison functions with the courts, the Office of the U.S. Attorney, the Office of the Corporation Counsel, bar associations, and other legal organizations as applicable."

The Committee received public hearing testimony on this point from D.C. Corporation Counsel Robert Spagnoletti. Mr. Spagnoletti testified that, in the future:

- Office of Corporation Counsel (OCC) attorneys in the Torts & Equity Division will be active in "providing advice and guidance to the police – before the demonstration begins – on how to minimize the common liabilities that occur during protests."
- OCC attorneys will "participate in reviewing the operational plans of MPD before each protest to suggest ways to avoid lawsuits that might arise from the implementation of these plans."
- OCC attorneys will "participate in the debriefing process immediately following a mass demonstration to help analyze the lessons learned and to ensure that we have current information on what happened during a protest that might lead to litigation."
- OCC will "continue to ensure that we have experienced criminal and civil lawyers available during the actual protest to answer legal questions as they arise to minimize the implications of uninformed decisions."

**Recommendation: The MPD General Counsel and an attorney from the Office of Corporation Counsel should be on the scene of mass demonstrations that have the potential for mass arrests.**



## *Media*

During mass demonstrations in recent years, a number of journalists, including journalists with MPD press credentials, have been swept up and arrested during mass arrests. According to a September 30, 2002 Reporters Committee for Freedom of the Press article, 17 journalists were arrested during the September 2002 mass arrests. The article noted:

Two washingtonpost.com reporters and a United Press International intern were arrested, detained and released without charges in a matter of hours. Student journalists and independent media were detained anywhere from 10 to 27 hours, slapped with a \$50 'post and forfeit' fee for early release and returned to their respective newsrooms with a criminal charge of failing to obey the police.

In the same article, washingtonpost.com reporter Michael Bruno commented "The more well known your press outlet, the more secure you'll be...I feel sorry for reporters who don't have that benefit and who are essentially doing the same job." The inference of the article is that mainstream reporters may have been released through MPD's detention log process, through which any official evidence of their arrest is eliminated by MPD on the same day as the arrest.

During the course of its investigation, the Committee received complaints alleging such disparate treatment between mainstream media and independent media. The Committee deposed Sergeant Joe Gentile, MPD's Public Information Officer, to get information on MPD's media credentialing policy. Sgt. Gentile explained that journalists can apply for and receive MPD media credentials as long as they can prove that they are from a "bonafide" press outlet. MPD verifies this by contacting the supervisors of the applicants. Sgt. Gentile testified that MPD has often granted media credentials to student and independent journalists. He also testified that MPD typically does recognize press passes from other police departments and jurisdictions, and that the policy during demonstrations is to treat all bonafide passes the same way.

According to Sgt. Gentile's testimony, a bonafide press pass allows journalists to cross a police line when the commanding official on the scene says it is safe to do so. When asked about specific instances of journalists being arrested during demonstrations in recent years, Sgt. Gentile testified that he could only assume that those journalists had broken the law. When asked why some journalists in September 2002 were released through the detention log while others were not, Sgt. Gentile said he could not explain how that happened.

Although MPD's policy may be to treat equally all members of the media with bonafide media credentials, this policy has not been implemented equitably in recent years. For example, the names of Michael Bruno and the UPI intern referenced above are not included in arrest records from September 27, 2002, while the names of some student and Independent Media Center journalists are. Two groups of student journalists filed civil suits<sup>31</sup> against the District based on their arrests that day.

One of the reporters arrested that day at Vermont Avenue and K Street was Larry Towell, an internationally renowned Magnum photographer. According to Mr. Towell, despite having three cameras around his neck and press credentials from Magnum, the New York City Police Department, and the Israeli government, and despite repeatedly telling police officers that he was a journalist, he was arrested and detained for six hours.

Finally, the Committee has received troubling testimony that suggests MPD officers may be making judgments on the ground about who among journalists are "legitimate." For example, the following is an excerpt from the deposition testimony of Sgt. Keith DeVille, who supervises MPD's civil disturbance training unit:

Q: There are a lot of people that are not members of the legitimate press. It's called the Independent Media Center, they'll give anybody a paper thing that says 'I'm a photographer, I'm a reporter.' When in fact that they're a protester. They protest, they yell at the police, they do everything else, and then when it comes time to be arrested they say no, I'm the media.

A: Well how do you know who is and who isn't?...

Q: They carry media credentials. And not issued by the Independent Media Center, not issued by the University of Maryland frat house or something that they're reporting for. We recognize legitimate media personnel that are their doing their job and not participating in the demonstration...

A: Let's say I claim I'm a member of the media, OK, and I have a police press pass. Would that do it for me?

Q: You would not...you should be allowed to leave, if you choose to leave.

Contrary to Sgt. DeVille's statement, MPD does issue media credentials to journalists from the Independent Media Center and from universities. According to MPD's media policy as articulated by Sgt. Gentile, the judgment that should be

<sup>31</sup> *Chang, et al v. U.S., et al and Jones, et al v. D.C., et al*

made on the ground during demonstrations should be based on two clear factors: 1) whether the journalist has bonafide credentials, in which case those credentials are given deference and 2) whether the individual has broken the law, in which case police action can be taken irrespective of credentials.

The policy as articulated by Sgt. Gentile is not in MPD's SOP on handling mass demonstrations. In fact, the only relevant policy in the SOP is a section that describes the Office of Public Information's responsibilities during a mass demonstration. The same section has new language added to the SOP in May 2003 requiring MPD members to report "media misconduct" to the Office of Public Information, but it does define what constitutes such misconduct.

*Recommendations:*

**MPD should issue a clear, written policy on the treatment of media during mass demonstrations and this policy should be incorporated into the SOPs and training curriculum on mass demonstrations.**

**Consistent with MPD policy, police officers should honor press credentials and not make ad hoc judgments as to press legitimacy. As is the case with other persons, credentialed reporters should not be arrested unless they are specifically observed breaking the law.**

