

April 28, 2016

Chief Kathleen O'Toole
Seattle Police Department
610 5th Avenue
Seattle, WA 98124

RE: Preliminary Assessment Report

Dear Chief O'Toole:

Please accept the following preliminary report concerning the police practices involved prior to and during the "May Day" event in Seattle, on May 1, 2015. This document is focused on the pre-event and officer/citizen operational processes involved, and offers specific thoughts on moving forward towards the 2016 event-with emphasis on increasing the probability of positive outcomes. This report is independent of the final and comprehensive document that I anticipate being submitted by the Crowd Management Group, and subject to modification as additional and diverse information is provided by Commander David Pearson and Chief Chris Burbank.

Best regards.

A handwritten signature in black ink, appearing to read "S. Ijames". The signature is stylized with a large, looped "S" and a cursive "Ijames".

Steve Ijames

Overview:

Based on my research and review of numerous relevant documents (internal and external to Seattle PD), it appears clear that Seattle is a vibrant, diverse, and dynamic community, with a well-documented and robust history of public assembly, protest, and "marching". The vast majority of these events are lawfully conducted, and have resulted in citizens peacefully expressing their thoughts without violence or criminality. This was accurately characterized by Mayor Ed Murray after he viewed damage following May Day 2015, and said "protest doesn't need violence".¹ Likewise, Seattle has experienced a number of significant public gatherings, with several resulting in unlawful behavior, property damage, arrests, serious injury, and death-to include:

- Wobblies protest: This Nov. 5, 1916, event produced the most violent outcome of a protest effort in the region's history. Two men were killed and 16-20 were wounded, in a shootout between local authorities in Everett and members of the Industrial Workers of the World union, commonly called "Wobblies."
- Rodney King verdict: During the early morning of May 1, 1992, about a hundred people were involved in violence downtown that included broken windows, looting and overturning cars. The following night on Capitol Hill there was more violence and damage, along with a confrontation between police and a mob outside East Precinct police headquarters. In all, 180 people were arrested, 149 of them adults.
- WTO: The meeting of world leaders in November 1999 resulted in a downtown curfew zone, after vandals clashed with police and damaged property over a three-day period. Estimates of the number of protestors ranged as high as 40,000. CS tear gas was used for the first time in Seattle in 30 years, along with hundreds of rounds of impact munitions. Police arrested 157 people, and there were no reports of serious injury or deaths.
- Mardi Gras 2001: Approximately 5,000 people celebrating Mardi Gras in Pioneer Square were exposed to minimal police interaction. Public disorder followed, resulting in one murder, ten serious injuries, and one sexual assault. The crowd was ultimately cleared in approximately 30 minutes, following police public order control measures and less lethal force options.
- Occupy 2011:

Chase Bank Protest-November 2: Major police/protestor confrontation outside of the bank during arrests.

Protestor March-November 15: Protestors violate permitted march and interaction with police becomes violent. Pepper spray was used and ultimately results in National news stories concerning an 84-year-old woman and a pregnant woman, who alleged the spray caused her to miscarry her baby.

Port Riot-December 12: Police allow blockage of port access, which ultimately leads to physical confrontations between police, protestors, and physical attacks on officers.

¹ <http://www.capitolhillseattle.com/2015/05/seattle-may-day-2015-turns-into-a-riot-on-capitol-hill/>

- May Day 2013: A large group gathered at MLK Park, and is escorted by the police without incident. A second protest that is not legally permitted turns violent, as police are attacked with rocks and bottles. Seventeen arrests are made, and eight officers are injured. Anarchist members attempt to get peaceful protestors to turn violent against the police, which results in fights breaking out between the two groups.
- Black Friday 2014: A large group of protestors form and march illegally, with the goal of disrupting the annual Christmas tree lightening celebration at Westlake Park. Efforts to stop access are thwarted as protestors break into small group flight tactics in numerous directions, and then gather at Westlake Center. Access is gained to the upper level and the event is disrupted.
- May Day 2014: A large gathering forms at MLK King Park. The follow-up march goes as planned, with positive police interaction with protestors. A large group then marches from the East Precinct led by persons dressed in clown costumes. This interaction results in attacks in the crowd, throwing of rocks, bottles, and paint cans, fires being started in the streets, and attacks on officers.

May Day 2015:

The after action report created by the Seattle Police Department is believed to accurately characterize what occurred on May 1, 2015 from the police department perspective. Not surprisingly, there are those outside the department that have raised questions concerning the manner in which some of the police/citizen interactions occurred. I have reviewed a variety of documents concerning this event that were provided by the Seattle Police Department, as well as documents and video from other sources. In consideration of this material and the totality of my knowledge, training, and police experience, I offer the following thoughts and considerations in advance of May Day 2016:

Pre-event planning, training, and operational interaction: The Seattle Police Department puts forth significant effort and related directives as it prepares for known or foreseeable large scale public disorder events such as May Day. The May Day 2015 Incident Action Plan is 32 pages long, detailed, and comprehensive; the May Day 2016 Incident Action Plan is similarly well thought-out and comprehensive. In addition, the 457 page Integrated Crowd Management Training Manual, which the Department created based in large part on its review of the May Day 2015 response, is the most detailed and comprehensive that I have reviewed. The pre-event planning, training, and written directives provide much needed guidance for line officers, who will be tasked with making critical decisions and acting in response to citizen activity in the field. The material review indicated that the Seattle Police Department effectively polices a significant number of major public order events each year, with statistically few negative outcomes.

The planning and training processes are only effective if the plans and practices (training) are in fact followed and implemented in every case reasonably possible. Following its review of tactics

deployed on May Day 2015, SPD's internal Force Review Board issued a number of findings and recommendations to guide preparations for May Day 2016.² Although I understand that most, if not all, of these recommendations have been implemented in plans for May Day 2016, I will address several of these issues first, then offer additional thoughts in advance of May Day 2016.

Issue #1-Use of Rubber Blast Ball Grenades (blast-balls): The Force Review Board recommended that SPD re-evaluate how and under what circumstances officers use blast-balls as a means of moving or dispersing crowds of people. Based on measures implemented in advance of May Day 2016, I believe the Department more than satisfied any need to re-evaluate "how and under what circumstances" these devices are used. The Seattle Police Department has a detailed and comprehensive training program in the deployment and use of blast balls, that clearly addresses "how and under what circumstances" by written lesson plan and video, how the devices are to be used. The area of concern is not the rules and or method of engagement, but the justification and accountability as it relates to the established protocols and processes not being followed. A review of open source photographs and video of the 2015 event suggests that some blast ball devices were deployed in a manner that resulted in them igniting in close physical contact with citizens; if intentionally targeted at individuals, this would be in conflict with training and contemporary police practice.

Action step #1-Be prepared to conduct an inquiry into the process involving the issuing and operational deployment of blast balls during May Day 2016, specifically as it relates to:

- determining the number of devices tossed by each person and or unit
- comparing these numbers with other persons and or units
- reviewing the reported justification for their use
- conducting an objective analysis (using such things as photographs, video, officer and witness statements, location of use, etc.) of whether the frequency, circumstances, and method of deployment involved was consistent with the documented agency training and use protocol.

Absent a situation where officers were facing the immediate threat of death or serious physical injury, intentionally targeting a blast ball device at or in unreasonably close proximity to a human being would not be justified use of force. It is important to learn after every incident whether any misuse and or overuse of the blast ball device was widespread and pervasive, or limited in scope. If widespread and pervasive-which, based on the material I reviewed, I have no reason to believe was the case, that would indicate a disconnect between the blast ball training material, the actual training that was provided, and operational deployment. If limited in scope, future misuse could be prevented by identifying the unit(s) and or person(s) involved, and holding them individually accountable for violating training and policy. It is important to note that blast balls contain the same explosive payload as a noise/flash diversionary device⁴, are registered as destructive devices with the Bureau of Alcohol, Tobacco, and Firearms (BATF), and are fully capable (as warned by the manufacturer) of causing death or serious injury if

² Many of the FRB's recommendations were subsequently echoed by OPA Director Pierce Murphy, as management action recommendations to the Department.

⁴ Combined Tactical Systems Material Safety Data Sheet for the Blast Ball and NFDD

ignited against or in close proximity to a vital body part. As such, it is imperative that these devices be used as SPD training specifies, and that this issue be fully addressed and reconciled prior to May Day 2016. It is my understanding, based on my review of the 2016 training curriculum, that these concerns have in fact been addressed.

Issue #2- Inventory and Control of Blast-balls: As noted above, the blast balls are individually serialized and their inventory and storage is regulated by the BATF.

Action step #2-This is inter-related with issue and action step #1, and is a part of the inquiry outlined above. Absent clearly articulated circumstances, there should not be a dramatic difference between the number and frequency of blast balls deployed by unit and or officer. Historically, dramatic deviations from the norm (what commonly occurs in like circumstances) in the application of force-be it blast ball or TASER-is reflective of a lack of accountability and oversight at the supervisory and or operational level. This must be investigated and addressed; it is my understanding, based on materials provided, that the Department has strict auditing and ATF reporting protocols in place

Issue #3-Use of Less Lethal Projectiles in the crowd control environment, and concerns related to potential injury. The material reviewed did not provide a clear indication of who was armed with an impact projectile system, the type of system(s) involved, what the specific rules of engagement for use were, how many rounds were fired, in what circumstances, and the outcomes. A review of the open source photographic material showed officers with 40mm launchers, pepperball systems, and the FN303. Impact projectiles have been used in public disorder situations for several hundred years. In recent times (1966 to present) they have resulted in the death of 19 people in the United Kingdom, and 17 in the United States. There is a place for impact projectile launching systems in public disorder situations, but only in the hands of highly trained officers who have proven a mastery (validated training) of the potentially deadly limitations of the systems involved.

Action step #3- Be prepared to conduct an inquiry into the specific process involving the issuing, deployment, and firing of impact projectile (less lethal projectiles) launchers during May Day 2016, to include:

- the device(s) involved
- rationale for issuing/selection of a particular device
- rules of engagement
- number of rounds fired and by whom (unit and individual officer)
- circumstances of use
- outcomes
- the command level knowledge concerning all of the above

Impact projectiles are potentially lethal. This is especially true in dynamic environments such as public disorder, where targets are moving and the speed of the round over distance increases the probability of impacting non-selected persons and or body parts. It is important to assess the exact circumstances in which impact launchers were authorized and used in 2015, and whether

the deployments were consistent with training, policy, and rules of engagement. It is my understanding that these circumstances were in fact assessed by the Force Review Board following May Day 2015, and I recommend the same practice be in place following May Day 2016. There should be absolute clarity at the operational command level concerning who will be issued an impact launcher, why they are issued a specific type of launcher, the circumstances in which the launcher is intended to be used, and validation of learning concerning the specific impact launcher/rounds involved and the unique risks to citizens as it relates to impact launcher use in crowd control scenarios. Historically, impact launchers have been involved in a disproportionate number of accidental/unintended serious injuries as compared to other force options during crowd control events. Accordingly, the issuing and potential use of these devices in public disorder situations should be limited, and demands specific command level approval, oversight, and ownership at every level referenced above generally, and specifically prior to May Day 2016.

Issue #4-Role, Training and Expectations of Officers from Outside the Seattle Police Department. The FRB recommended that the Department review how mutual aid officers are utilized in crowd management situations.

Action step #4-I agree that if the decision is made to continue using mutual aid officers, their training, equipment, assignment, supervision, and role/rules of engagement be specifically addressed in a written and executed memorandum of understanding. It is my understanding that, in advance of May Day 2016, mutual aid agencies have been provided with SPD's rules of engagement, and have agreed to provide SPD with any and all use of force reports that are required of these officers.

Issue #5- OPA recommended that officers be readily identifiable by name and serial number.

Action Step #5-The issue of crowd dynamics and its impact on both officers and citizens is a subject of much debate. The 19th century French psychologist Gustave Le Bon believed that when acting alone man is a cultivated individual, but when in a crowd he becomes a barbarian. Le Bon attributed the "anonymity, contagion and suggestibility" of the crowd to causing "man to descend several rungs in the ladder of civilization."¹⁰ More timely assessments suggest a reduction of inhibition and de-individuation in certain crowd situations,¹¹ while others assert that these notions are outdated and counter to the modern scientific understanding of crowd behavior.¹² Likewise, police behavior in recent times (Ferguson, e.g.), has been characterized by some as the cause or catalyst for the public disorder that occurred. My personal experience with assessing use of force in crowd situations has been that on occasion, officers use force differently and inappropriately as compared to an "ordinary" individual officer/citizen encounter. A

¹⁰ https://en.wikipedia.org/wiki/Gustave_Le_Bon

¹¹ Michael Potegal, John F. Knutson, *The Dynamics of Aggression: Biological and Social Processes in Dyads and Groups*, Psychology Press 2013, page 271

¹² http://www.slate.com/articles/health_and_science/science/2015/03/crowd_psychology_people_are_friendly_altruistic_happy_in_large_gatherings.html

common thread in these cases has been the degree of anonymity associated with the public order event, attire, or lack of ready identification (name tag, etc.) as compared to standard police uniforms. Accordingly, there is no logical reason why officers should not be readily identifiable by a number on their chest or headgear. It is my understanding that the Department has implemented measures to provide identifying information on officer helmets during May Day 2016.

Issue #6-Operational leadership, supervision, and training. The Seattle Police Department faces public disorder challenges that are somewhat unique in the North American police experience. Most officers in this country will never stand a skirmish line, race bicycles block to block to interdict pre-planned small group disorder tactics, or face off with anarchists determined to interact with them violently. Seattle Police not only do this with regularity-they can mark their calendars (May Day, Black Friday, etc.) as it relates to when the next interaction of this type will occur. Police performance in situations like this-positive or negative-is a direct reflection of the knowledge, training, and experience of those tasked with leading, supervising, and preparing the line officers involved.

Action step #6-Continue the review process undertaken by the Force Review Board following May Day 2015 to assess supervisor performance, including:

- a brief summary of the role each person filled
- an objective assessment to occur of each person and position, specifically as it relates to their DOCUMENTED and or PROVEN knowledge, training, and experience in the position and role they are tasked with fulfilling, for purposes of guiding leadership assignments for upcoming events.

It is important to recognize that the decision making related to the level of resistance faced by officers below those persons/positions referenced above is unprecedented in law enforcement. Accordingly, it is imperative that those tasked with leading and supervising have documented and proven knowledge, training, and experience (all three) in the relevant areas. I have found with surprising frequency in post event legal challenge cases that those tasked with leading, supervising, and training line officers for the interactions likely to be faced often lack the pre-requisite knowledge, training, and experience needed to do so-resulting in negative and often indefensible outcomes. It is a disservice to all involved to place persons in positions they are not adequately prepared to fulfill. This can only be addressed by ensuring the right person is in the right place, and that can only happen after a validation process as referenced above has been set in motion. Should a person be found in a position they are not adequately prepared or suited to fill, they should be removed.

Issue #7-Rules of engagement, May Day 2016-The focus of agency criticism as it relates to May Day 2015 can be reduced down to a single issue-rules of engagement. When, why, and how officers interact with citizens generally, and with physical force in particular (hands on, bike fences, OC spray, impact rounds, bikes running into suspects from behind, blast balls, etc.), is the crux of the controversy.

Action step #7-It is imperative that SPD leadership-up to and including the office of Chief of Police-be fluent in all rules of engagement established for May Day 2016, to include those written as well as addressed in the on going pre-event training. This literally means leadership must discuss with the authors and understand specific "if/then" scenarios contained within the written rules of engagement, and attend or be live briefed by those providing training in order to truly understand what the officers are specifically being instructed to do. I have found with surprising frequency in post event legal challenge cases that those tasked with ultimate ownership of officer training and related behavior (rules of engagement), often had little if any knowledge of what was actually involved-and in fact often disagreed (confidentially and in hindsight) with what had been trained and or authorized. It is my understanding that comprehensive rules of engagement for May Day 2016 have been drafted, distributed, and vetted by Department leadership, up to and including all operations members of Command Staff.

Preliminary report summary:

Based on the material reviewed and consideration of the totality of my knowledge, training, and experience, it is my preliminary opinion that the Seattle Police Department generally does an excellent job of policing a significant number of high profile, public order related events. Their primary focus appears to be on ensuring citizens rights to assemble, speak, and protest, while protecting the safety of all involved. Regretfully, certain segments of those in attendance are predetermined to interact with law enforcement in a negative way. This has resulted in police taking action in response-to include the use of force-that has been subject to criticism. The issues above are offered and addressed as preliminary steps in preparation of May Day 2016, and in furtherance of the overall Crowd Management Group Process. I look forward to continuing the effort, and being a part of the comprehensive assessment and final report to be submitted at a time in the near future.

Respectfully,

A handwritten signature in black ink, appearing to read "Steve Ijames". The signature is stylized with a large, looped "S" and "I" and a cursive "James".

Steve Ijames