

This officer, as part of an official investigation, is being asked questions specifically, directly and narrowly related to past performance of his/her official duties. This officer is being compelled to answer questions and make statements under threat of dismissal from the department, and without waiving the officer's constitutional right to refuse to self-incrimination. Use of the statements or the fruit thereof will not be used in any criminal prosecution.

This is a true and involuntary statement given by me in compliance with Section 8.400 of the Seattle Police Department manual order by Capt. Allen. I invoke my Garrity rights prior to giving this statement.

This statement is intended to cover my role in the events that occurred from approximately 5/31/20-6/07/20. This document is not intended to detail every action taken or decision made but will address key items relevant to these incidents. It is likely additional information and perspective may become apparent after re-reading this prepared statement, viewing provided video, and/or additional information comes to my attention.

Background and Experience

I was hired in 1992 by the Seattle Police Department and completed the Washington State Basic Law Enforcement Academy. After completion of the field training program I was assigned to the Operations Bureau as a patrol officer. In the 1990's I attended and completed the Seattle Police Department bike school. I also completed Anti-Crime Team training and Community Police Team training.

As an officer, Sgt. and later a Lt. I have been involved in numerous civil disturbances and crowd management events over my career. As an officer, I worked several minor events during the 1990's and was assigned to work in a crowd management platoon during WTO in 1999. WTO is a very well-known crowd control event that had a lasting impact on how police respond to large unruly crowds. For a variety of reasons, it escalated to beyond the capabilities of police to respond and emergency measures were needed to stabilize the event. Significant use of crowd control munitions, including CS gas, were required to move very large crowds and to disrupt criminal behavior.

The next year I worked as a crowd management line officer during a large-scale disturbance related to Mardi Gras events in Pioneer Square. Mardi Gras was a multi-day annual celebration centered around various bars in the Pioneer Square area. It was characterized by large crowds whose actions over the course of an evening were increasingly impacted by alcohol. In 2000 the crowd grew unruly and an order to disperse was given. I worked with other officers to clear the square and deter acts of violence.

In 2000 I joined the Seattle Police Department SWAT team and worked several demonstrations during my time in the unit. I attended and completed the state SWAT school and completed 100's of hours of SPD SWAT specific training on a variety of topics. Additionally, I received extensive training in less lethal munitions, crowd dynamics and crowd control tactics. In approximately 2005 I attended the National Tactical Officers Association weeklong less lethal munitions instructor school. I completed the school and

became the Cadre leader for less lethal munitions within the SWAT team. The school certified me as an instructor for the entire class of munitions associated with less lethal force tools. This included “blast balls”, distraction devises, launchable munitions and gas options. The school also trained me in how to deploy the tools and provided models for using devices in various situations. I assisted in developing training, tactics, creating a qualification course and a process for certifying that members were appropriately trained. I later became a TASER instructor and have assisted in training and certifying TASER officers for the department.

In 2001 I was assigned to the SWAT team during our response to Mardi Gras events that year. As had happened the year before, Mardi Gras 2001 celebrations also became unruly and violent. At the start of the weekend events officers were confronted by crowds who refused to cooperate. Emergency vehicles could not get into the area to provide aid to someone in need of medical attention. Patrol and bike officers attempted to disrupt the crowd to free up the flow of traffic. The officers began taking rocks and bottles from individuals refusing to exit Pioneer Square. A dispersal order was given and ignored. The crowd was moved from the area to disrupt illegal activity. This led to several days of confrontations between police and demonstrators. Significant pressure and criticism were leveled against the Seattle Police Department for its handling of demonstrators and unruly crowds, including the use of use of less-than-lethal munitions and chemical agents. This led to a “hands off” approach to the later 2001 Mardi Gras events.

On the following Tuesday, a large crowd was allowed to coalesce in Pioneer Square, with police manning the perimeter. Assaults, sexual assaults and weapons-related offenses began to occur within the crowd. There were reports of roving bands of people moving through the crowd, assaulting partygoers. Though numerous complaints were made to officers on the perimeter, they were ordered not to enter the crowd to engage those involved in criminal activity. Unlawful behavior continued to escalate; to the point that a person was firing a pistol inside the crowd and a 20 year-old college student, Kris Kime, was severely beaten while trying to assist a young woman who had fallen. About 45 minutes elapsed before he was taken to Harborview Medical Center, where he died. The Seattle Fire Department reported that medics could not reach Kime because police could not secure the area. Mr. Kime’s family filed a lawsuit against the City claiming that the hands-off approach by officers fed the atmosphere of lawlessness that erupted. Ultimately, the City settled by paying out a \$1.75 million settlement, setting up a scholarship in Mr. Kime’s name and erecting a bronze plaque in his honor in Pioneer Square. When given the orders to act, the area was substantially cleared using crowd control munitions in approximately 15 minutes. I was assigned to these events with the SWAT team and participated in the operations that occurred over the weekend. Over the next few years in SWAT I worked several other crowd management events of varying sizes and complexities.

In 2008 I was assigned to work as an A/Sgt. in the East Precinct and was promoted to Sergeant in 2009. Shortly after promotion I became the South Precinct Anti-Crime Team supervisor. ACT is a proactive unit within each precinct that addresses developing crime issues impacting the community. Ancillary to its traditional functions, ACT is also called on to assist with evolving incidents citywide. ACT is routinely assigned to assist with large crowd management events and tasked to assist other precincts as needed.

In September 2011 groups of individuals began to demonstrate in support of actions occurring in New York by the Occupy Wall Street movement. The groups were protesting wealth inequity, corporate greed and corruption. The Occupy Seattle group initially demonstrated in downtown Seattle, then relocated to Westlake Park where they established a long-term camp. This began a multi-month police presence and

response to various Occupy Seattle events. As an ACT Sgt. I responded to several of these events and supervised my squad during these operations. The Occupy Seattle demonstrators conducted numerous marches, primarily through the areas of downtown Seattle. These demonstrations continued from September until mid-December 2011.

During a protest at the Port of Seattle during that same time period, the demonstrators blocked access to port facilities and erected a significant barricade. I worked the event and observed the actions of the crowd. I noticed vehicle traffic came to a standstill in the area, making it impossible for additional on-call police resources to respond to assist. The crowd broke into a nearby business and stole items to erect the barricade. Eventually, on-scene officers used minimal less-lethal munitions and the crowd was dispersed.

In 2013 I was assigned to the training unit to supervise officers providing in service training. While working in the Advanced Training Unit I was also assigned to work several crowd management events. In 2014, I worked as a crowd control squad supervisor during the Super Bowl celebration parade. This is the largest event I have observed with an estimated crowd size of 700,000 people. Although a very large crowd it was compliant and cooperative. During that time, I also worked other crowd management events including May Day. May Day demonstrations have become a significant crowd management challenge. Large groups of demonstrators wishing to bring attention to political grievances legally march long distances within the city. The vast majority of participants demonstrate legally and present no public safety concerns. However, small groups with the singular goal of disrupting the demonstration or seeking a confrontation with police integrate themselves into the groups who legally demonstrate. They often use the crowd as cover for disruptive behavior. In 2012, the Department again attempted a relatively low-key approach to May Day demonstrators, which was very unsuccessful. Substantial property damage resulted when insufficient officers were in place to address criminal conduct. Poor planning, poor leadership, mixed messages from command, unclear rules of engagement and inadequate staffing complicated the Seattle Police Department's response. Even when enough officers were present, numerous confrontations still occurred between officers and demonstrators. In 2015 I worked as a bike squad supervisor during May Day events. The crowd was cooperative in the AM but as the day evolved increasing numbers of demonstrators became confrontational. After a series of assaults, the incident was classified as a riot and the crowd was dispersed. This was a very dangerous event for officers with numerous items being thrown at them and several were injured. The crowd was eventually dispersed.

In 2017 I was promoted to Lieutenant and became a watch commander in the West Precinct. Due to my experience as bike officer and my familiarity with managing demonstrations I supervised numerous special events in the city. I have been the incident commander or operations section chief for every major event that usually occurs during a particular year. This has included May Day, July 4th, Pride Parade, New Year's Eve, Black Friday, Torchlight, Opening of the Alaska Way tunnel, Seahawks games, numerous smaller demonstrations and first amendment events. I have been involved in an estimated 2-4 events per month since coming to the precinct. In 2019 I took over as the bike Lieutenant who is tasked with supervising four bike squads, an ACT team and a focus squad. During most crowd management events, I am responsible for the crowd control resources assigned to the incident.

While in the training unit I was tasked with developing crowd control training for the supervisors and officers. In that role, I wrote the Integrated Crowd Management manual intended to document and define the departments approach to addressing crowd management events. The manual covers history, tactics,

crowd dynamics, philosophy, law, how to employ certain assets and how to manage these events. The manual was reviewed and approved by peers, by the Department Legal Advisors, by the Department of Justice, the Monitoring Team, the Community Police Commission and other external reviewers. The manual has served as the basis for training officers and supervisors to respond to crowd management events. I have instructed the bulk of these courses since the inception of the training program. Later I assisted in development of incident command crowd management training and instructed the course to police leadership.

In addition to documenting and defining our method of operation crowd management events I developed our de-escalation training program and our bias-free policing course. This included writing the ISDM's, development of the classes and I assisted in its instruction. These are foundational pieces of our officers training. The de-escalation component is required of officers to employ when safe and feasible to avoid the need to use force. In addition to de-escalation and bias-free policing training I assisted in the development of our Use of Force supervisor course, our force investigation training and have sat on the Force Review Board since 2013. I have instructed the bulk of our supervisors in force investigation. An extension of the use of force training was the initiation of Sgt.'s Academy. I assisted in the development of the curriculum and have taught the course since developed in 2013. De-escalation training and use of force training was reviewed and approved by the Department of Justice, the Monitoring Team and the Community Police Commission. Above is some of my relevant background that creates the experience from which I draw on when making decisions in the field.

Crowd Management Concepts

A foundational right and a defining characteristic of our American society is freedom of speech and the right to exercise that freedom through peaceful assembly and protest. The vigorous exercising of this freedom has been a driving force in allowing our nation to evolve and for the voice of the people to be heard to address grievances, or to resolve conflicts that naturally arise between groups in a country as diverse as ours.

A core value of the Seattle Police Department is supporting the rights of free speech and assembly guaranteed by the First Amendment of the Constitution. The First Amendment states;

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The role of the Seattle Police Department is the protection of the rights of people to peacefully assemble, demonstrate, protest, or rally. It is also our responsibility to protect the lives and property of the community. Sometimes it can be difficult to balance the need to protect lives and property while safeguarding freedom of speech and assembly.

There is a long history of large crowds acting both orderly and lawfully. There is also a long history of demonstrations that have resulted in disorderly and illegal conduct. The role of police is to support and protect the fundamental rights of the community. All persons in the United States have the right to march, demonstrate, protest, or undertake similar activities protected under the First Amendment to the United States Constitution. Although the right to free speech and to demonstrate are foundational concepts built into the Constitution and are the bedrock on which the Republic is based, these rights are not without

limitation. There are common law exceptions incorporated into federal and state law that limit demonstration which endangers the public.

Speech and assembly are generally protected unless they present a clear and present danger to the community.¹ Speech is protected unless it rises to the level of advocating or carrying out imminent lawless action. The speech must demonstrate intent, imminence and likelihood of lawless action before it can be considered outside of protected speech. In grappling with the issues of free speech, under the First Amendment, virtually all speech is permissible, allowing society and the “marketplace of ideas” to reach favorable conclusions. Similarly, the rights to assemble and demonstrate are also strongly protected. Freedom of speech, the right to assemble, and the right to demonstrate are subject only to reasonable restrictions on the time, place, and manner of their expression

Although we place tremendous significance on the right of the community to exercise their First Amendment Rights, it is not without limits. The first amendment prohibits governmental action that denies or abridges freedom of speech or expression. However, the first amendment does not guarantee the right to employ every conceivable method of communication at all times and in all places. We may impose reasonable restrictions on the time, place or manner of protected speech. A valid time, place and manner restriction, however, must be content-neutral, narrowly tailored to serve a significant governmental interest and leave open alternative means for communication of the information. The mission of the Seattle Police Department at these events is to keep people safe, enforce the law and preserve order. This is routinely included in the mission briefing prior to a scheduled event. The Seattle Police response priorities are: Life Safety, Incident Stabilization, Property Conservation, and Crime Scene Preservation.

Our operational plans are to facilitate events and support all groups right to exercise free speech. Tactics used are intended to de-escalate events minimizing the potential for conflict. Our efforts are solely focused on addressing criminal conduct and not on the content being discussed. To curb the potential for violence and conflict the Seattle Police Department advocates community outreach and coordination to facilitate the exercise of civil liberties. This approach begins with defining the mission of safeguarding the fundamental rights of people to gather and exercise free speech. The approach reflects our core values in viewing the community as our customer, supporting and protecting the public’s right to demonstrate. As an agency, when feasible, we engage with all potential demonstrations using constructive discussions, dialogue, and during the event using a soft approach to interact with the public. We attempt a variety of approaches intended to cooperate and de-escalate the potential for confrontation. During an event officers mingle and relate to the crowd using low-key procedures based on participants’ behavior. Often this is done with minimal police presence or using a variety of postures intended to reduce the perception of conflict. For many events in the city we have minimal or no police presence. The demonstrators define and control the nature of the police response. We have a highly permissive approach that supports demonstrations regardless if they are permitted. Groups can march and demonstrate provided a public safety risk does not develop. There are numerous examples over the last several weeks of very large crowds exercising their First Amendment right to free speech with no police involvement.

Our objective is to act as a facilitator, rather than confronter. Maintaining dialogue throughout the event helps minimize conflict. Most crowd situations in Seattle do not involve unlawful behavior. The Seattle

1 Brandenburg v. Ohio, 395 U.S. 444 (1969)

Police Department's responsibility is to objectively discern at what juncture a demonstration leaves the realm of legal protest and becomes an abridgement of the rights of others. We seek to facilitate lawful expression by groups who are present even when unlawful activity occurs. The goal is to protect lawful activity while identifying and isolating unlawful behavior. We negotiate, educate, and maintain continual dialogue with organizers and crowd members. It is accepted that police will support demonstrations but cannot allow the crowd to hurt others or destroy property.

As noted above free speech rights are not absolute. Law enforcement can place reasonable restrictions on time, place and manner of demonstration. Substantial caselaw supports this approach provided the limits are constitutionally permissible. There is a resulting three prong analysis for assessing the constitutionality of police action addressing free speech and assembly. 1. Police action must be content neutral 2. The police action must be narrowly tailored to serve a significant government interest 3. Police action must leave ample alternatives for communication.

The first prong mandates that police not react to the what is being said nor limit content except in those rare circumstances that speech is advocating imminent lawlessness. In my career, I have never observed us react to content, only to violations of law. Any enforcement action taken was done in reaction to a violation of law. The courts have held that statutory authority is, by definition content neutral. As an example, pedestrian interference and obstruction are content neutral statutes and do not seek to regulate speech "at all, much less speech containing any particular message." *City of Seattle v. Barnes*, 03/06/19. "(W)hether a statute is content neutral or content based is something that can be determined on the face of it; if the statute describes speech by content then it is content based." 535 U.S. 425, 448, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002) (Kennedy, J., concurring). The 9th Circuit has adopted this view. *Ctr. for Fair Pub. Policy v. Maricopa County*, 336 F.3d 1153, 1164 (9th Cir.2003). Since applicable statutes do not reference speech, they are content neutral. *Menotti v. City of Seattle*, 409 F.3d 1113, (9th Cir. 2005) Each of the applicable ordinances likely applied during a demonstration regulates conduct not content of speech. This is in keeping with our desire to hold people personally responsible for illegal conduct and when feasible direct police enforcement at specific individuals responsible for criminal law violations.

The second prong in determining if government restrictions are reasonable must assess if the police action taken is narrowly tailored to serve a significant government interest. As noted in *Menotti*, "no one could seriously dispute that the government has a significant interest in maintaining government order." The Supreme Court has declared that "[i]t is a traditional exercise of the States' police powers to protect the health and safety of their citizens." *Hill*, 530 U.S. at 715, 120 S. Ct. 2480. The entire goal of our operations, as noted in our mission statement above, is to keep people safe while facilitating the exercise of free speech and assembly. In the face of violent acts, the City has a duty to restore order and to ensure the safety of demonstrators and the residents of Seattle. Actions by officers guiding or restricting movement, keeping opposing groups separate and designating areas for assembly are intended to minimize the risk of physical confrontation. These actions are designed to permit freedom of speech and assembly while ensuring the safety of the demonstrators and spectators. The restrictions are equally applied to all demonstrators with the police often acting between the groups to maintain safe distances while permitting demonstration and exercise of speech and assembly.

All the police action taken during these events of May and early June were narrowly tailored to serve a significant government interest. They were focused on keeping everyone in the community safe. If groups can close with each other, or officers, the potential for conflict increases. Maintaining separation between

groups of a few feet has shown to dramatically reduce the potential for violence. The use of demonstration zones has also assisted in coordinating events and maintaining confrontational separation. No actions were taken by police to limit the content of either groups first amendment expression. I believe the actions taken by the Seattle Police were narrowly tailored to serve the significant government purpose of stopping violent confrontation while facilitating free speech.

The final prong to assess whether time, place and manner restrictions are constitutional is to determine if the government provided reasonable alternative channels of communication. In *Menotti*, the court observed that “[t]he Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of a particular community or setting.” *Ctr. for Fair Pub. Policy*, 336 F.3d at 1170 (quoting *Colacurcio v. City of Kent*, 163 F.3d 545, 555 (9th Cir.1998)). A time, place, and manner restriction does not violate the First Amendment “simply because there is some imaginable alternative that might be less burdensome on speech.” *Albertini*, 472 U.S. at 689, 105 S.Ct. 2897. “Of course, the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired.” *Bay Area Peace Navy*, 914 F.2d at 1229 (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)). However, an “alternative mode of communication may be constitutionally inadequate if the speaker's ‘ability to communicate effectively is threatened.’ ” *Id.* (quoting *Taxpayers for Vincent*, 466 U.S. at 812, 104 S.Ct. 211

Menotti notes that the “ample alternatives” communications criteria cannot be taken to mean that each protestor has the right to convey his or her message in the manner preferred by that protestor. The City has the right to act to protect all members of the group during a demonstration. The permissible communications available to protestors over the last several weeks remained the same as any other event except that police created some separation between demonstrators and officers. No method of communication was restricted, only the distance between groups was controlled. As noted in *WTO* protests demonstrating on the “periphery of the restricted zone, were perhaps not ideal for protestors who wanted to present views in the face of delegates,⁵³ but neither did they wholly exclude protestors from the delegates' purview.” Similarly, no method of demonstration was controlled, only separation was maintained to decrease the potential for conflict. In the “ample alternatives” context, the Supreme Court has made clear that the First Amendment requires only that the government refrain from denying a “reasonable opportunity” for communication. *Menotti* noted that since protestors in *WTO* were allowed to demonstrate directly across the street from the Washington State Convention & Trade Center, the Paramount Theater, three out of four major hotels where *WTO* delegates were staying, and throughout the rest of downtown Seattle, the city had provided ample alternative channels of communication.

Marches and demonstrations are protected up to the point where they become civil disturbances. A civil disturbance is an unlawful assembly as defined by law. In general, Seattle and Washington State have accepted and supported all demonstrations, provided they do not result in a substantial risk to public safety. Provided the conduct of a group of people is not criminal or their actions do not create “substantial risk of causing injury to any person, or substantial harm to property”, their right to demonstrate is protected and will be supported by law enforcement. Once a demonstration crosses the line from free speech guided by time, place and manner restrictions to riotous behavior the need to protect the community outweighs the right to freedom of speech.

Applying time, place and manner restrictions for public safety reasons is part of our tactical approach to demonstrations. These concepts guide our decision making but to understand how they translate to tactics it is important to look at their evolution. Following significant demonstrations in the late 1960's and early 1970's, police departments developed demonstration tactics designed to mitigate the impact of illegal conduct, while still protecting the rights of citizens to exercise free speech and demonstrate. Many of these tactics were intended to address large scale demonstrations and marches, often preplanned by the demonstrators; permitting time to develop an appropriate response. The National Guard and major police agencies moved to address civil unrest with specially trained personnel executing highly-choreographed tactical plans. (FM3-19.15 Civil Disturbance Operations, US Army 2005, Law Enforcement Guide for Emergency Operations, Cal OES, 2014) The approach became almost universally known as the Mobile Field Force concept for addressing various types of emergency including civil unrest. Mobile Field Force tactics are designed around approximately 10-person squads combined into approximately 40-person platoons, with multiple platoons assembled to provide the needed resources for large demonstrations. Each unit is supplied with specialty equipment and less-lethal tools designed to address likely threats and provide reasonable force options. "Riot" shields, helmets with face shields and officers armed with "riot" batons became the standard response for crowd control. Some of the equipment is obviously intended to provide officer protection, while the riot baton was intended to assist in controlling crowd movements and as an impact weapon if needed. When deployed, Mobile Field Force officers were intended to intimidate demonstrators using coordinated visual displays and maneuvers, including, banging shields with batons and various formations to limit or reduce criminal conduct and physical confrontation. Over several years, additional less-lethal tools have been added to improve police response to riotous crowds, minimizing the potential for officer or suspect injury. Less-lethal tools now include various forms of chemical agents, launchable munitions deploying various impact devices/gas and "blast ball" distraction devices. Used properly, these devices have proven to be highly effective in countering illegal conduct and disrupting riotous behavior.

A successful tactical response to demonstrations using the Mobile Field Force principles requires several supporting concepts be in place, including highly trained officers and leadership, recurring training to reinforce skills, sufficient time to plan an appropriate response, adequate resources available during the incident and the correct assessment of the opposition's capabilities and intent. The success of the tactics are predicated on significant police training, on capable and trained leadership, substantial time to plan and implement a coordinated response and having sufficient resources available to adequately respond to these incidents. The Internet is replete with examples where one or more of the requirements needed for a "Mobile Field Force" deployment is found lacking. The 1999 Seattle WTO incident is a prime example of misapplication of Mobile Field Force concepts to a very large and disruptive crowd. Refusal to commit sufficient resources, poor leadership, ignoring reliable intelligence, poor planning, lack of governmental support for the planned response, tactical limitations of traditional tactics, inadequate logistics, and other issues contributed to a law enforcement response that did not adequately protect the property and the public.

Prior to WTO we had relied on mobile field force. WTO marked a shift in the tactics and motivations of demonstrators. Prior to WTO, many demonstrations were designed by their planners and participants to express political beliefs or draw attention to member's grievances. Examples include anti-war marches in the 60's and 70's, pro-life marches, anti-nuclear demonstrations, marches for equal rights, "Tractorcade", and National March for Lesbian and Gay Rights are but a few of these types of demonstrations. Although

not free from confrontations with law enforcement, these demonstrations did not appear designed around tactics to engage police. From WTO forward, the Seattle Police Department has increasingly faced demonstrations directed at law enforcement or as a direct response to actions taken by police. Additionally, demonstrators have become significantly more sophisticated in their approach to demonstrations. Demonstrators are now more mobile, better coordinated, utilize technology to organize and communicate, and employ sophisticated tactics to counter known police responses. Using peaceful demonstrators as cover, determining when insufficient officers are present prior to taking illegal action, wearing gas masks and other protective equipment, erecting barricades, starting fires in the roadway and using bicycles for enhanced mobility are examples of techniques used to counter law enforcement training.

WTO was unique in the size of the crowd and the motivation of the demonstrators. The event completely overwhelmed the planned response, requiring the emergency allocation of resources and an alteration of tactics in order to cope with events. It has become a watershed moment in the way Seattle Police officers are deployed in response to demonstrations. Traditional Mobile Field Force line riot tactics were overcome by the sheer numbers of demonstrators involved, the large scope of the area affected and the mobility of the crowds. It was impossible to field sufficient numbers to move or control the movement of the crowd, arrest individuals committing crime, or to protect property. On-scene officers and leaders realized tactics were needed that could effectively address problem conduct with the limited numbers of officers at a scene; multiplying the effectiveness of deployed officers. The use of chemical agents, less-lethal impact devices, and mobile crowd management tactics proved to be highly effective in moving very large numbers of people when it was required. The use of these munitions enabled a greatly outnumbered police force to manage extremely large violent crowds while minimizing injury potential for the protesters as well as the police officers.

*“The methods used by SPD to restore order were fully consistent with the police rules regarding the use of force. The two basic guidelines regarding the “continuum of force” demonstrated at WTO are (1) that the force employed must be proportionate to the threat presented and (2) that the officer never relinquishes the right to self-defense. When presented with the need to reopen the Downtown area and protect the rights of all people. SPD had two basic choices when those obstructing the area refused to obey a lawful police order to disperse: **they could use batons, with the potential physical injury that they cause, or they could employ chemical irritants and other less-lethal munitions.** The use of chemical irritants and other less-lethal munitions allowed SPD to open the area, allowing Conference delegates to move among venues while avoiding serious injuries or fatalities. SPD did well to choose the latter course of actions.”* **SPD WTO After Action**

A lesson learned from WTO and reinforced by later incidents was the importance of maintaining distance from demonstrators and the desire to keep groups moving rather than allowing them to congregate. At the core of this tactical shift was the recognition that allowing a disruptive crowd to coalesce at fixed points creates a greater likelihood of confrontation. Once officers and crowds are fixed in place, officers and demonstrators are often faced with individual confrontations at close range; literally face-to face or arms-length away from each other. These confrontations, at these distances, carry a high degree of risk to both sides and have a high potential for physical confrontation due to the perception of danger by each side. The importance of positioning and movement were not the only lessons learned. The overall mobile field force concept was found to have severe limitations. Fielding enough officers in line formations, on short notice, to handle crowds from 500-10,000 demonstrators is almost impossible for all but the largest

police agencies. Numbers alone are not the only issue. When traditional demonstration squads are formed, they tend to be static and relatively inflexible. Historically these line formations are very tight, almost shoulder-to-shoulder across a line facing a crowd. These formations are easily out maneuvered and compromised by large groups of demonstrators.

As traditional police tactics were found wanting, WTO identified the value of using police bicycles in a crowd control fashion, utilizing squad movement to encourage demonstrators to move away from areas of potential property damage. This first deployment proved highly effective, enabling officers to meet law enforcement objectives while adding substantial mobility to counter demonstrator's tactics. Bike officers used what is now known as the "Mobile Fence Line" to separate the crowd from exposed property or persons at risk. The tactic has become a core tactic of bike officers. Additional basic crowd management tactics were developed from foot officer training and adapted for officers on bicycles. Due to the strengths of this approach, the role of the Police Cyclist in the Seattle Police Department for crowd management and control has grown to be the agency's primary response for demonstrations.

Seattle Police Department field tactics are built on the use of the Police Cyclist as a primary demonstration management asset and the expansion of less-lethal tools deployed during demonstration events. Both tactical evolutions resulted in a police response that has significantly greater impact per officer when compared to traditional riot line tactics. These tactics allows, the Seattle Police Department to do more with less, while at the same time reducing the potential for physical confrontation when compared to historical police response to riotous behavior. Bike officers provide substantially greater mobility than foot officers. Mobility creates tactical flexibility and the ability to be where illegal conduct is occurring. Bike officers also utilize tactics that significantly add to police options for responding to crowds, including using their bikes as mobile barriers during crowd control situations. Use of a bike in this manner accomplishes two goals:

- 1) The bikes create barriers and distance between demonstrators and police, reducing the likelihood of physical confrontation, and
- 2) When the bike is turned sideways and used as a barrier, one bike covers the same area as 2-3 line officers standing shoulder to shoulder (6+ feet).

The standoff distance provided by using bikes as barriers creates space that permits movement and redeployment of officers as the situation dictates. Police Bicyclists are rarely fixed to a particular location, unless they are specifically needed to remain in place to achieve a tactical objective. Tactical flexibility permits opportunities to de-escalate events, disengage from confrontational behavior and use tools to minimize officer exposure to risks. Not only are there direct tactical advantages to using Police Bicyclists, there are strong institutional incentives to deploy the tactics. Bike officers are multifunctional, having proven to be a very effective form of providing standard policing, particularly in crowded urban areas, and have the ability to address legitimate policing needs beyond specialized riot units. Additionally, bike officers often present a less provocative police image, even in a line, as compared to masses of officers deployed shoulder-to-shoulder with riot armor, helmets, shields, and batons.

WTO also marked a technological tipping point for U.S. law enforcement with the deployment of significant and new less-lethal tools. Chemical, irritant agents such as CS gas have been available since the 1960's. However, in response to events in Northern Ireland and other police incidents internationally, companies developed and expanded less-lethal tools including various launchable impact munitions, noise flash diversion devices, and various methods of Oleoresin Capsicum delivery. By the time of WTO, issuance of handheld [oleoresin capsicum](#) spray devices to individual officers had become routine. These OC spray devices provided officers with the capabilities of delivering relatively safe, individualized and directed chemical agents. A hand-held rubberized noise device known as a "blast ball" was developed, which creates a loud blast of noise. Deployed at a safe distance from individuals, blast balls can be effective in creating distance and efficiently breaking up disruptive crowds. These new tools provided capabilities that exceeded what was historically possible from the same number of officers deployed in line formations during large demonstrations. The use of these tools was often preferable to traditional crowd control tactics. Officers closing with crowds, armed with long batons, is likely to result in significant injury to those involved. Less lethal tools are substantially less dangerous and have resulted in very limited injury. Based on experience, most deployments result in no injury. The safest and most effective means to disrupt crowds engaged in criminal conduct is the use of less munitions.

Use of less-lethal devices and police cyclists not only represents a tactical shift in responding to illegal conduct during demonstrations, but also reflects a change in the goals of law enforcement when addressing crowds. Standard police practices previously focused on arresting individuals or groups for particular criminal acts. The size of the demonstrations and the mobility of the rioters made the concept of mass arrest of violators unfeasible given the limited number of officers available. It was recognized that keeping a crowd moving, and not allowing them to coalesce and organize, was safer for officers, the community and the demonstrators. Arrests were made when possible, but were fairly limited in relation to the numbers of demonstrators. The arrests of individuals also highlighted the difficulties of prosecuting individuals with crimes related to conduct that took place as part of a large demonstration.

Lessons learned from WTO led to an evolution in tactics, in which police presence focused on escorting marchers, rather than confronting or constraining the movements of demonstrators. Officers remain a visible presence, escorting the demonstration, but not engaging demonstrators unless criminal conduct is observed. Police bicyclists, supported by less-lethal devices, can take law enforcement action if necessary. The overall goal is to arrest individuals involved in criminal activity as quickly as possible, remove those individuals from the scene, and encourage the law-abiding demonstrators to continue along their course. The desired result is reduced confrontations, through de-escalation and a minimal reliance on force, while still maintaining order and protecting the safety and interests of those not involved in the demonstration. This approach has allowed the Seattle Police Department to support demonstrations, take law enforcement action when required, use relatively low levels of force, and protect the rights of all involved; consistent with the mission statement of the Seattle Police Department. However, when some of these advantages are taken away the tactical options become very limited.

Occupy Seattle, the annual May Day protests, and many other demonstration events have provided ongoing opportunities for the Seattle Police Department to refine its response to crowd control. Bike officers supported by specialized units have become the primary method for monitoring and addressing demonstrations. Additional equipment and training have improved law enforcement's performance in addressing any public safety concerns that arise. As police tactics have evolved, so have the tactics of those who wish to disrupt legal demonstrations. Seattle has experienced a significant number of

spontaneous demonstrations, as well as demonstrations whose outcome was not anticipated. The number of demonstrations has continued to increase over the last decade. Though few events span multiple days, such as during WTO, the events have increasingly become day-long, travelling throughout the city, disrupting vehicle traffic and businesses, limiting the response abilities of vehicle based officers, and necessitating the need for bicycle and foot officers to deploy in agile squads in order to keep up with and manage the event.

It has been clearly established that a hands-off approach to confrontational crowds can contribute to substantial illegal conduct resulting in serious public safety issues. This creates a considerable risk to the community and is unsound. It is important to maintain a police presence to deter illegal behavior and protect the rights of those who wish to legally assemble and demonstrate. While attempting to de-escalate, and avoid unnecessary confrontation, officers must still be ready and able to take effective action to address criminal behavior. The preferred approach to an unruly crowd is to promptly and safely disperse a crowd that has become riotous. This is safer for the crowd, the community and officers. Delay in dispersion likely increases numbers, emboldens those that are riotous and places more people at risk.

Often dispersal of the crowd must be done using less lethal munitions to address acts of violence or substantial property destruction. Failures to provide any less-lethal options have hampered the ability of police to effectively address increasingly hostile and riotous crowd. According to the after-action report on the Baltimore riots, with the exception of SWAT, the police lacked any viable less-lethal tools.² “In the officers’ perspective, it was the less-lethal munitions equipment that was the most effective tool in quelling the rioting.”³ “When the use of formations is no longer an effective control option and a crowd refuses to comply with the lawful and necessary orders of the police, other techniques such as...controlled use-of-force (e.g., chemical agents) may be needed.”⁴ The effectiveness of less-lethal tools in disrupting riotous crowds, such as those experienced by Baltimore Police, has been time and again been proven through numerous engagements with crowds who are otherwise unresponsive to other methods of dispersal.

The use of less lethal munitions is often misunderstood. These tools are designed to create space and stop assaultive behavior or property destruction. Blast balls, OC and CS gas create distance, limiting or denying physical confrontation between the crowd and officers. These tools are intended to de-escalate the actions of the crowd reducing the need to use higher levels of force. Proximity to a confrontational crowd significantly reduces safety of all involved and limits response options. Crowd movement has proven to be effective at mitigating the advantage possessed by rioters. We consistently train that movement is our ally. Movement creates space between officer lines and rioters. We want to avoid close contact which would require officers to rely on riot batons to defend themselves. Often in these circumstance officers are substantially outnumbered and staying in close contact in fixed positions creates a substantial officer safety risk. Without other force options officers, would be required to rely on batons to protect themselves and to move protestors. The use of riot batons carries a greater risk of injury to the crowd and is generally the least effective option for officers. The baton does not facilitate the ability to arrest, detain

2 Lessons Learned-2015 Civil Unrest in Baltimore, PERF, Sept 2015 p. 38

3 Ibid.

4 Police management of Mass Demonstrations: Identifying Issues and Successful Approaches, 2006 p.

or deter illegal acts. The likelihood of a physical struggle also increases, as the baton may be grabbed by suspects to prevent its use by officers. In general, these types of movements are impossible without substantial mutual aid. To move groups, tactics require we ensure our flanks are protected and officer lines cannot be flanked or surrounded. To do this even at a single intersection would require close to a hundred officers severely limiting the ability to address other developing safety issues. These types of tactics should be avoided if at all possible.

Less lethal munitions and chemical agents are the safest way to disrupt riotous behavior. The intended objective in using these tools is to immediately end acts of violence against officers or other members of the community. Other objectives for the use of less lethal munitions is to immediately end acts of violence against lawful/peaceful protestors, separate groups of willing combatants and prevent significant property damage. These tools can perform area denial functions, preventing access to non-permitted or unsafe areas. Once used to create movement and space the goal is to maintain movement using other reasonable tactics. Compelling and maintaining movement disrupts the ability of a crowd to commit additional formulated acts of violence. (see 2020 Blast Ball Training)

By policy a Lieutenant may authorize the use of blast balls and OC spray to disperse a crowd if an immediate life safety emergency exists that requires this action be taken and there is insufficient time to obtain incident command approval. Once the exigency ends, so does the ability to deploy dispersal devices or chemical agents. The exigency ends when the following are accomplished:

- The violent action against a person has stopped
- The property damage has been stopped
- A safe space has been created to work within

Officers may make individual decisions to deploy when the actions of a group create a threat of harm to the officer, someone else or to stop substantial property damage. This is consistent with law, policy and training.

Blast Ball policy states:

8.300 – POL –10 Use of Force – Blast Balls

This policy applies to the use of blast balls by all sworn Department employees.

1. Only Officers Who Have Completed Department Blast Ball Training are Permitted to Deploy Blast Balls
2. Officers Shall Only Use Department-Issued Blast Balls
3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional

When feasible, officers shall avoid deploying blast balls in the proximity of people who are not posing a risk to public safety or property.

4. When Feasible, Officers Will Not Deploy Blast Balls Until a Dispersal Order Has Been Issued to the Crowd, the Crowd Has Been Given a Reasonable Amount of Time to Comply, and a Supervisor Has Authorized the Deployment

Exception: Officers may reasonably deploy blast balls to address an imminent risk of harm to a person or significant property damage.

SPD Manual Section 14.090-POL-10 states:

10. Officers May Make **Individual Decisions** to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force

The authorized use of OC in crowd management situations involving violent activity shall have as a primary objective at least one of the following:

- Defend oneself
- Defend someone else
- Prevent significant destruction of property

Effectively the above defines what is reasonable for deployment of less lethal munitions. As noted in policy and law we do not have to wait for an assault to begin for officers to act. The description in policy, when combined with the concept that officers need not wait to be assaulted or have to wait till someone is injured to act, equates to an officer being able to use these munitions when there is a threat of harm to the officer or another person. This is consistent with our TASER, 40 mm and OC policy and training. 8.300-POL-5 directly points out the advantage of less lethal tools when it states that “OC spray may reduce or eliminate the need for substantial physical force to make an arrest or gain custody.” Our UOF policy discusses in several locations how it is relevant to the decision to use less lethal tools the fact that such use will likely reduce the potential for injuries to officers and subjects. The fact these tools likely reduce injuries is an important part of justifying their use as objectively reasonable, necessary and proportional. Specifically, **SPD Manual 8.300-POL 2-(4)** states officers may **use** Tasers when a subject causes an **immediate threat of harm** to **any** person;

or

When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is:

(1) likely to cause injury to the officer; or

(2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of TASER.

The above manual section defines when a Taser deployment is objectively reasonable, necessary and proportional. **SPD Manual section 8.300-POL-11(7)** similarly defines objective reasonable, necessary and proportional for the 40-mm launcher:

Officers may **use** a 40 mm LL Launcher in the following circumstances:

- When a subject poses an immediate threat of harm to **any** person; or
- When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is

(1) likely to cause injury to the officer; or

(2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of the 40 mm Less Lethal Impact Munition (LLIM).

Training, Taser policy and 40-mm policy all state it is permissible to use less lethal tools to overcome an immediate threat of harm or when the use of the tool would reduce the potential for greater injury if forced to go hands on. Use under those circumstances is objectively reasonable, necessary and proportional. As noted in law, policy and training, the use of less lethal tools is permissible to overcome actual resistance or the threat of resistance. We have consistently taught we can use OC, Blast Balls, Taser and 40-mm to overcome active resistance with a threat of harm. This fits squarely with the national perspective that less lethal tools are an intermediate force option deployable to overcome active resistance. Active resistance occurs when an officer encounters behavior that physically counteracts his or her attempt to control, and which creates risk of bodily harm to the officer, subject, and/or other person. Although not specifically stated in policy it does matter that the use of OC and Blast Balls will likely reduce the risk of injury to officers and suspects. The threat of harm, as discussed in policy, applies to potential injury to both officer and suspect. Note policy when referring to a “threat of harm” applies the concept to any person. Therefore, the use of OC, Blast Balls is permissible to overcome an immediate threat of harm and when going hands on would likely result in greater injury than the use of the tool.

Use of CS chemical agents for crowd dispersal is currently held by SWAT and used only in situations when other crowd control tactics are not effective. Frankly, the decision to restrict the use of CS has been political. Optics and concerns related to the large deployment range of CS has affected the use of the agent. CS is very effective and poses limited risk to those who are exposed. Injuries related to the use of CS are very rare, particularly when compared to other force options. CS frankly has less impact on those exposed than other alternatives. I am trained in use of CS and have been exposed to its effects. CS, particularly in its gas form, dissipates almost immediately once an exposed person leaves the deployment area. This is unlike other tools. In contrast OC spray often takes several minutes for its effect to end. Similarly, a person who has had a TASER deployed against them must usually endure 5 seconds for the deployment cycle to end. Impact munitions, blast balls and impact tools are the more likely to leave lasting effects due potential bruising, abrasions or cuts. When analyzing the reasonableness of a use of force option, we look to the level of intrusion and its correlation to the resistance offered by the suspect. CS has a very limited level of intrusion, with no lasting effects that can be mitigated almost immediately by moving away from officers, which is often the desired outcome. CS is used to lessen the likelihood of using higher levels of force. CS is a force option that is intended to de-escalate an incident. Use of CS is not covered by policy. The use of CS, as with all force options, must be objectively reasonable, necessary and proportional.

When analyzing CS deployment using *Graham v Connor* and the context of how it is employed by SPD, use of CS is inherently reasonable. It is used only when extreme life safety emergency exists or when other tools are ineffective. When CS is used the severity of the crime is significant, like a riot in progress with a substantial risk of injury or death to those involved. The level of intrusion is minimal. The effects can dissipate once the person leaves the area of exposure. The effects are not permanent. Very limited reports of injury related to the use of CS exist. In recent applications the crowd was often provided substantial warning, 2+ hours, an opportunity to leave, with an avenue of escape. CS was used only crowds that had demonstrated an intent to pose an immediate threat to the safety of officers or others. The time to make

an alternative force decision is limited due to the level of escalation operationally permitted prior to use of CS. It is only used as a last resort so the opportunity to formulate an alternative option are often very limited with officers being actively assaulted putting them under severe time pressure decision-making. In that context de-escalation is not safe nor feasible.

In practice CS has become a tool of last resort. It is only used when all other tools will not work to disrupt acts of violence or criminal conduct. We are effectively using it when we face assaultive resistance or aggravated aggressive resistance. For a variety of reasons, we have escalated the employment of CS to a level that is inconsistent with our correlation of force to resistance. The correlation is based on the level of intrusion relative the resistance offered. We can use force that minimally intrudes at lower levels of resistance and can only use very intrusive levels of force when facing very high levels of resistance. Inconsistent with other force options, we use CS, creating a low level of intrusion, only when facing the highest level of resistance. The decisions by agencies to treat CS in this way is done to address optics. Even the concern related to the indiscriminate nature of CS is incorrect based on how SPD employs the munitions. We only use CS when the event has become a riot, where the crowd is as a whole conducting criminal activity and when, for officer safety reasons, we cannot hold people individually accountable.

The use of CS and less lethal munitions in crowd control situations is being questioned nationally. This is not new and has been done after every significant demonstration for the last 20 years. The focus of these efforts is routinely centered around the assertion that munitions were used against "lawful protestors." What is often ignored or misinterpreted is the level of police discretion used during these events. SPD often permits a crowd to march and demonstrate in violation of a variety of laws to reduce the potential for conflict. This discretion is misinterpreted by some that a crowd's actions are legal. That is an incorrect assumption. What often flows from this is the assertion that crimes committed are "low level" offenses. As a society we have defined what is illegal. We attach importance to the severity to offenses that particularly impacts the accountability portion of the judicial process. Police operate in a slightly different manner. Under *Graham and Garner* the severity of the offense impacts the reasonableness of the force option initially chosen to take suspect into custody. The greater the risk to the community the higher the force option that may be reasonably used. For police the initial offense may be minor, but resistance to the seizure may be substantial. A minor offense can evolve during the contact. It is incorrect to attach too high of importance to the reason for the initial stop and as stated in *Graham* we must look to the totality of the circumstances. The reasonableness of officer force is affected by the resistance offered by the suspect. As the resistance escalates so does the reasonableness of the force option used.

Over the last two weeks the crowds and participants during the demonstrations were violating the law. The case below highlights points that often ignored by critics:

"Plaintiffs' theory of outrage is that SPD officers launched grenades into a crowd of people who were acting lawfully and complying with police commands. No evidence supports this view of events. The demonstration that took place on the evening of May 1, 2015, was itself illegal because it made "use" of public places and streets without the requisite permit. Seattle Municipal Code ("SMC") 15.04.010(A); see SMC 15.02.048 (defining "use"); see also SMC 11.25.110 (regarding the use of streets and sidewalks for marches). Protestors were undisputedly occupying the street and blocking traffic, which is prohibited by state law and Seattle ordinance.³ Moreover, virtually every video submitted by plaintiffs contradicts the notion that protestors were complying with police commands; rather, individuals can be seen standing in the way of the approaching police formation, yelling at officers, or attempting to record their activities."

Jurkowski v. City of Seattle

As noted in the case above, people blocking traffic, ignoring police commands, without a permit are committing a crime. Probable cause exists to make an arrest for these and potentially other violations. Officers may use objectively reasonable force to overcome resistance to achieve our law enforcement objective when addressing illegal conduct. Therefore, use of reasonable force to address a crowd engaged in criminal conduct is permissible. However, we are largely not acting to address these “minor” offences. Our use of less lethal munitions, CS and other force options are in response to the resistance offered by the crowd. SPD used its discretion to permit conduct that is illegal to minimize the restrictions on free speech and hopefully reduce conflict. Police action was taken when these minor offenses evolved into life safety situations and when there was substantial property damage underway. At that point we are addressing assaults and felony property damage, not the initial violation of law.

Furthermore, people who fail to disperse when ordered to do so are also committing a crime.

RCW 9A.84.020

Failure to Disperse.

(1) A person is guilty of failure to disperse if:

- (a) He or she congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and
- (b) He or she refuses or fails to disperse when ordered to do so by a peace officer or other public servant engaged in enforcing or executing the law.

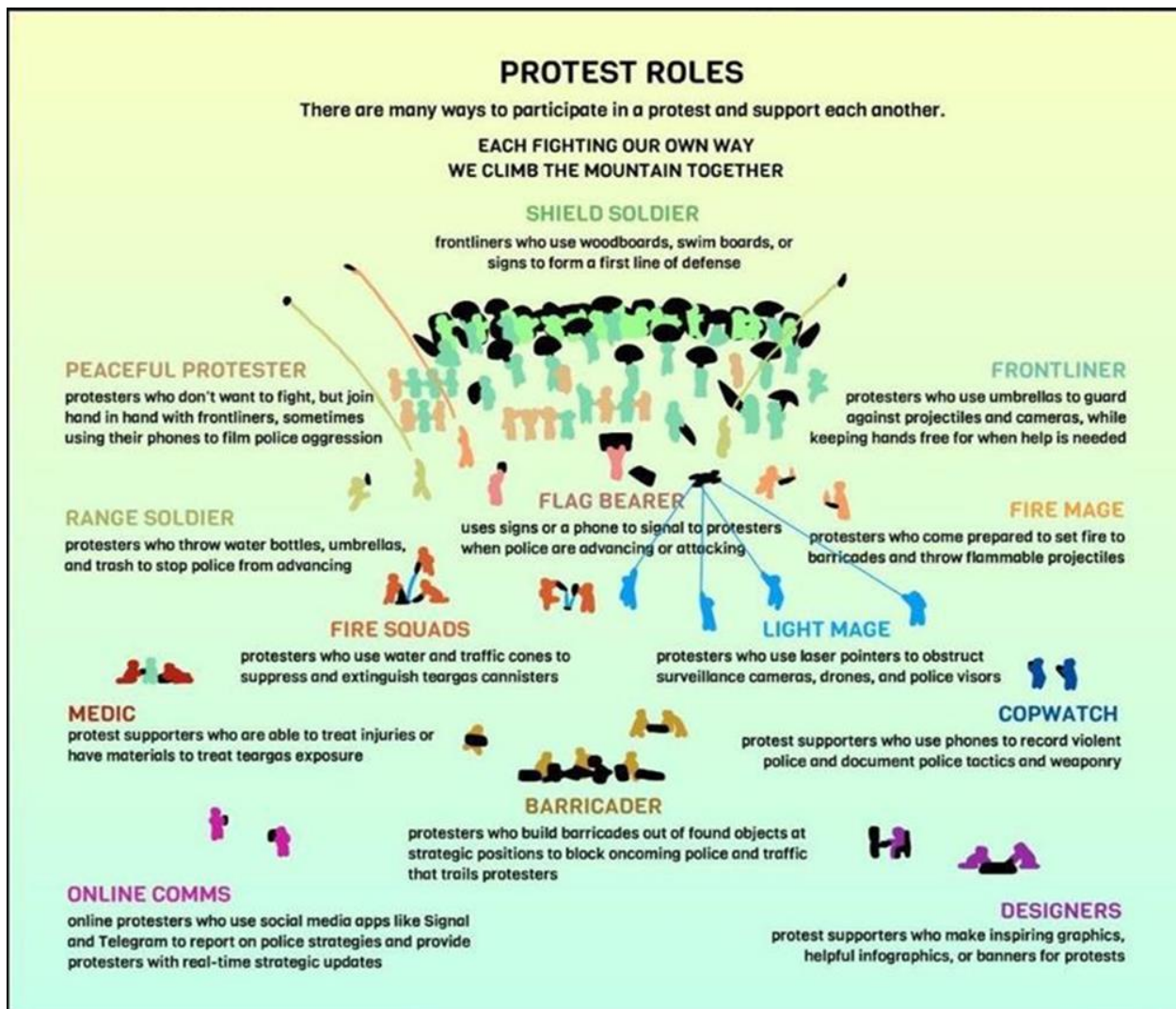
It should be noted that violation of the Failure to Disperse statute does not require that the arrested person conduct acts which create a substantial risk of injury or substantial harm to property. A person is guilty of the crime if they fail to leave when ordered to and the group’s activities present enough risk to someone or something. Put another way, a person is guilty of a crime if the actions of the **group** create the risk and they fail to leave. After repeated warnings and orders to disperse it could also be asserted that members of a group assume a degree of personal responsibility for remaining in the area of criminal conduct.

“In response to defendants’ motion for summary judgment, plaintiffs also fail to offer any evidence that they actually suffered severe emotional distress. Plaintiffs have provided no non-speculative evidence that they were targeted or intentionally hit with blast balls. Rather, plaintiffs put themselves in harm’s way. Each plaintiff had participated in at least one previous May Day protest, and they were both aware that the situation was inherently unsafe. See Donny-Clark Dep. at 108:10-17, 123:3-16, Ex. S to Miller Decl. (docket no. 67-2); Jurkowski Dep. at 74:1-6, 90:3-95:1, Ex. ZA to Miller Decl. (docket no. 67-2). Indeed, the potential for injury was the reason that each plaintiff undertook to serve as a “street medic” on the evening at issue. Thus, neither plaintiff can assert that they did not anticipate the May Day 2015 riot and resulting police response,⁴ and tellingly, neither plaintiff has submitted a declaration or testimony concerning any severe emotional distress. Defendants’ motion for summary judgment is GRANTED as to plaintiffs’ outrage claim (Count 6 of the Amended Complaint).”

Jurkowski v. City of Seattle

Like the facts of Jurkowski, people involved in demonstrations should have developed an understanding of the nature of these events. If they participated in any of these events, they should have understood how they were developing. I observed organized, coordinated and energized crowds that appeared focused on confrontation. They arrived with improvised armor, with shields, gas masks and eye protection. They were committing criminal acts and potentially subject to arrest. Numerous warnings were provided and pleas for compliance were made. On several occasions the announcements went on for hours. Steps were taken to ensure the crowd could hear the announcements. After Friday May 29th demonstration participants were also well aware of the environment of the demonstrations and what the results would be if the crowd had to be moved due to criminal conduct. Furthermore, by Sunday May 31st participants should have been aware of how riots and looting were being addressed nationwide. Nationally, committing crimes and acts of violence were being addressed with CS gas and less lethal munitions when it was unsafe to close with individual protestors.

Based on what I observed the tactics shown below are exactly what were used against us on the days in question. This level of coordination demonstrates both the sophistication of the rioters and the level of coordination. If it is accepted that SPD only takes crowd control measures in the most extreme circumstances, the only reason to use the tactics below is if the group intends to commit illegal acts and wants a confrontation with police. By the second day of the demonstrations, I could see many in the crowd using all of the tactics and techniques highlighted in the flier. The acts were all intentionally done indicating full understanding of the potential outcome for participating in a riot.



After hours of demonstration, with numerous warnings, after significant numbers of persons have taken actions to indicate they intend to resist lawful orders, all persons must be assumed to fully understand the potential for police response if acts create a substantial risk of injury. At that point, all people who remain in the area are committing a crime, are subject to arrest and understand the implications of rioting.

All force options have risks. Use of TASERs, impact munitions, OC spray, chemical agents and defensive control tactics can all cause injury or even death of individuals on which force is used. All these options are intended to reduce the injuries to officers and suspects when attempting to control a resistive person. These less than lethal tools have been historically successful at achieving law enforcement objectives with relatively few injuries compared to the number of deployments by police. The alternative to using these devices is to rely on higher levels of force resulting in higher potential for injury.

When evaluating our response to civil disturbances, it should be recognized that SPD has fully embraced the concept of using force as a “last resort” :

As a statement of principle to ensure procedural justice, law enforcement should provide all lawful and reasonable accommodation and support to facilitate the First Amendment expressive activity of citizens. Great restraint of police powers should be used to protect the rights of lawful demonstrators, while at the same time protecting the safety and rights of citizens whose persons and property are contiguous to the demonstration. In cases when the safety and rights of others are in jeopardy from the demonstration activities, law enforcement should propose alternate accommodations to protesters.

*The use of force via less-lethal weapons should be a **last resort** to maintain order and should be used only in a manner consistent with law and agency policy, after alternatives have been reasonably exhausted, after multiple warnings have been given to demonstrators, **and in situations when the threat to the safety of persons and protection of property are in imminent jeopardy.** When the decision is made to use these weapons, the police should be tactically placed to ensure that demonstrators have clear avenues of escape from the demonstration area. **The goal of these technologies is to disperse protesters, not capture them.**⁵*

***In dealing with considerations for deployment of less-lethal alternatives, those reviewing the actions of law enforcement should not lose sight of the reality that if law enforcement had not used such methods, the likelihood of personal conflict with officers would have increased.** With that increase comes a greater likelihood of the use of batons, physical struggles, use of electronic compliance measures, and even use of deadly force in defense of self or others. Evaluations of decisions to use less-lethal force must reflect upon what the alternative results might have been in the event less-lethal force had not been used.⁶*

Without the ready availability of less-lethal tools, for both close-range and long-range, and for both targeted and indirect deployment (such as riot lines), officers are left with few options. They can suffer assaults that present substantial risks for officer safety, disengage and let illegal activity go unanswered, or improvise. None of these options are desired.

Crowd Dynamics

Peaceable assembly, demonstration and marches are protected conduct. Most demonstrations in Seattle occur with police supporting and facilitating the exercise of the community's constitutional rights to exercise free speech and assembly. However, when some individuals are determined to engage in criminal conduct as part of a crowd, it can have an effect beyond the limited numbers of people involved. The nature of the event can influence people's conduct. There is substantial literature, academic study and law enforcement experience that indicates that criminal conduct by a limited few can impact the behavior

5 After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri, US

Department of Justice, Office of Community Oriented Policing Services, Critical Response Initiative

6 After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri, US

of others in a crowd. Additionally, many academic studies support the belief that crowd dynamics can coerce others in the group who are not predisposed to criminal conduct into contributing to the escalating violence of a riot. Crowd Contagion, Convergent Theory, Emergent Norm Theory, Collective Emotion, Freud's expression of repressed drives and other theories all attempt to explain the observed antisocial conduct of crowds that result from anonymity, stimulation, emotionality, suggestibility, initiation, contagion, lack of volition, force of unconscious impulses, etc., which are responsible for the emergence of the typical behavior of the crowd.⁴⁶

Many of the theories of crowd behaviors and the empirical evidence from which they are derived suggest that people in crowds often behave in a common manner as a collective entity or group. This is a recurring theme in several of the crowd behavior theories referred to above; for example, social identity theory and the de-individuation theory.⁴⁷ Broadly speaking, the crowd succumbs to the social influence of the wider group. De-individuation theory suggests that individuals, when they are anonymous crowd members, can lose their sense of self-awareness, self-observation, self-responsibility and individualized identity, resulting in weakened moral restraints and un-socialized and antisocial behaviors.⁷ The Emergent Norm Theory explains crowd conduct as governed by norms which emerge from the distinctive actions – i.e., rare actions, such as anti-social behaviors – of prominent crowd members. As more members adhere to these norms, they become more influential, and pressure to behave antisocially increases.⁸

When large groups of people come together, they can lose their sense of self-awareness and catch a mob mentality. Mob mentality can set in at protests - such as those organized in response to the NATO Summit in Chicago - or at a clearance sale. Social scientists give tips on how to avoid succumbing to mob mentality and to recognize warning signs of when crowds are getting out of control.

The concept of mob mentality first developed in the 1800s, when French sociologist Gustave

Le Bon wrote "The Crowd." He coined the phrase 'mob mentality' "to describe the idea that the mob seemed to act as if it were a single thing, unified by a shared sense of purpose," said Don Forsyth, professor at The Jepson School of Leadership Studies at the University of Richmond.

"Nowadays mob mentality pretty much just means that people do things in crowds and mobs that are stupid," actions they might typically avoid, Forsyth said. But people can lose selfidentity in a mob "and don't think about their own principles."

One theory for why this kind of group thinking comes about is the social psychology concept of "deindividuation."

Phil Zimbardo, a social scientist most noted for his classic 1971 study of people enacting the roles of prisoners and guards, is the primary developer of the deindividuation theory, according to Forsyth.

This theory implies "that with the right kind of social circumstances — anonymity, submersion in a large crowd, emotional arousal created through contagion — individuals become so caught up in the group experience that their individuality is temporarily minimized," Forsyth said.

7 Understanding Crowd Behaviors, p. 125

8 Understanding Crowd p. 125

“Conformity increases in mobs, as people do what everyone else is doing,” Forsyth said. “So, if the mob develops unusual ‘situational norms,’” such as burning cars, “then the majority of the group members will do that — resulting in what looks like mob mentality.” And “in most cases, the strong mob actions occur when people are part of a group with which they identify.”

According to⁹ Eitan Schwarz, an assistant professor of psychiatry and behavioral sciences at Northwestern University, survival instincts may also play a large role in why people engage in mob mentality.

“Our mammalian brains are wired to some extent,” Schwarz says, “to automatically trigger imitation, and this is amplified by how many other individuals we see,” Schwarz said.

When group leaders increasingly stimulate members’ senses of anger or righteousness, it is more likely those members will succumb to deindividuation, according to Schwarz.

Eventually, “a point is reached where we are so adrenalized that our fight or flight circuits are activated, overcoming more refined judgment,” Schwarz said. “The less an individual is ruled by reason, by his nature, the more prone he is to get involved.”

Relatively recent developments in the study of crowd dynamics have begun to look not just at how the crowd acts internally, but also how its interactions with external groups impact their conformance to legal standards.¹⁰ The Elaborated Social Identity Model of Crowd Behavior suggest that group actions do not take place in a vacuum and are impacted by interactions with external groups; typically the police.¹¹ The theory postulates that how the police act can influence a crowd in ways that promote conflict. Defensive police actions that are interpreted as considering a group as dangerous forms a reality for the crowd, who then consider the police as the opposition and promoting eventual conflict with those viewed as opposing the crowd. Interestingly, one of the theory’s primary principles is that the more the police are viewed as legitimate, the less likely there will be conflict. This theory further posits that individuals are affected by social position and when that changes as part of a crowd, individuals’ actions change in accordance with those of the group.¹² One of the more interesting concepts of the theory is the identification of different types of crowds. Those that are more organized are less likely to become problematic for police. They are also the groups most impacted by police outreach and collaboration to achieve the desired outcome of a peaceful demonstration.

The Elaborated Social Identity Model of Crowd Behavior has achieved considerable influence internationally among academics and major police agencies. The United Kingdom, Canada, Ireland and many others have taken these concepts and molded them into what PERF has referred to as a “Softer” Approach to Crowd Management.¹³ This has become the standard practice of the Seattle Police Department, which attempts to use the Elaborated Social Identity Model of Crowd Behavior theory to

9 <http://newsarchive.medill.northwestern.edu/chicago/news-205860.html>, **Mob mentality can take over protests or even clearance sales** by [Lacy Schley](#) May 22, 2012

10 Understanding Crowd p. 109

11 Understanding Crowd p. 110

12 Understanding Crowd p. 112

13 Managing Major Events: Best Practices from the Field, Critical Issues in Policing Series, June 2011, p. 7

reduce the potential for conflict when managing demonstrations. In simple terms, the Department reaches out to leaders of demonstrations, legitimizing their position, seeking collaboration and delineating legal behavior. The Elaborated Social Identity Model of Crowd Behavior suggests that such efforts not only encourage acceptable conduct, but promote “self-policing” during the demonstration. These efforts are also supported by the “meet and greet” approach of policing.¹⁴ The friendly outreach by officers works to reduce the perception of officers as opposition, thereby enhancing their legitimacy and encouraging the perception of procedural justice. It is complimented by the low-key presence of officers¹⁵ in standard equipment, to reduce the perception that conflict is imminent. Riot-equipped troops or specialty equipment is not present until needed, with most policing functions handled by line officers.

Numerous attempts during the May/June demonstrations were made along the lines suggested above to minimize our presence and reduce the potential for conflict. Often resources were hidden out of view to reduce the perception of conflict. At times our footprint was minimal or non-existent. SPD ‘s low key, outreach focused deployment only changed because of crowd actions. Officer safety became the driver of our response when changing our outward deployment profile.

Although there is considerable recognition that the manner in which police approach a demonstration can influence the potential outcome of an event, it is nonetheless well recognized that crowds can still be remain unpredictable and difficult for police to manage. Researchers recognize there are many different types of crowds and frequently many sub-groups within any crowd. This complicates communication between the police and demonstrators.¹⁶ Organized marches with well-identified leaders are the easiest and the most susceptible to police outreach. The primary researcher in this field acknowledges that police outreach, negotiation, communication, engagement and liaising with crowds are problematic with disorganized groups.¹⁷ The research also points out disruptive and violent demonstrators tend to be disorganized and less susceptible to outreach.¹⁸ In other words, the most problematic forms of demonstration for police are the least likely to be impacted by outreach attempts.

This is what we recently experienced. Some self-proclaimed leaders were identified and we attempted to work with them to achieve peaceful events. SPD tried daily to connect with leaders and work to coordinate demonstrations. However, their cooperation with the police led to them being branded by others in the group as compromised. Their ability to assist became increasingly marginalized. Additionally, the willingness of others to step forward during politically charged events slackened substantially. People who had been supporters or had worked with police in the past, refused to assist during the height of the demonstrations.

14 Managing Major Events pg., What the 1999 World Trade Organization Conference in Seattle Taught Police Executives, p. 8

15 Managing Major Events , What the 1999 World Trade Organization Conference in Seattle Taught Police Executives, p. 4

16 The Scottish Institute for Policing Research Practitioner Fellowship Police Liaison with Protest Groups Craig Menzies BA, MSc

17 The Scottish Institute for Policing p. 12

18 The Scottish Institute for Policing p. 12

Outreach and coordination are often possible during more routine events. However, a clear distinction must be made between a demonstration and a riot. Once an event becomes a riot the situation has changed. A riot is defined in Federal Law as:

(a) As used in this chapter, the term “riot” means a public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual. 18 U.S. Code 2102

Experts note that people change during a riot and do things they would never do during daily life.

“Something happens to make these people empowered and emboldened. People use the cover of the crowd to do stuff that they would never have the bottle to do as an individual, but when they were in that crowd they felt they had the power to do it, they had the mentality, they were willing to take a step further.” Temporary Assistant Commissioner, Chris Allison, Metropolitan Police.

“There also appears to be something about being part of a crowd which serves to empower individuals to behave contrary to their normal civil and moral restraints and, instead, commit disorder. When individuals come together as a crowd, a sense of group solidarity or ‘mob mentality’ is often created, whereupon members of the crowd feel empowered, under the ‘cover of the crowd’ to commit disorder and to incite disorder in others. Thus, normally law-abiding crowd members seem to be caught up in this ‘mob mentality’ and the emotion of the crowd, and subsequently break the law. Once disorder has been committed, the crowd typically maintain this sense of power and feel legitimate in continuing with their unlawful behavior.”

In the reference material, one of the primary researcher’s states that there must be delineation between an organized march and a riot. As stated, “...there is a realistic consensus that there is a meaningful distinction to be drawn between the “day-to-day” business of policing protest crowds and that of confronting serious urban disorder”.⁶² Once the crowd has crossed the line from a manageable demonstration to a riot, the police must act to protect all members of the community and their property.

The experience of law enforcement is that once conduct has transitioned from peaceable demonstration to illegal action, it is essential to intervene quickly to curtail the crowd dynamics from escalating. Most of the theories addressing crowd psychology suggest that individuals can be impacted by the intent of the crowd, which, when turned toward riotous action, can foster potential illegal conduct. Put another way, the more a riotous crowd is permitted to coalesce and adopt a “group think” approach, the greater the public safety risk. When illegal conduct occurs, police are often not immediately present or have insufficient resources available to address the conduct directly. The most reasonable law enforcement alternative is often to move the crowd, in order to disrupt the cohesion of the group; minimizing the potential for “crowd contagion” and promoting de-escalation of the event.

If it is accepted that, even in a riot, few actually desire to perform illegal activities, then efforts to minimize confrontation with the crowd should be taken. This is not to suggest that illegal conduct should be tolerated or condoned. In fact, the suggestion is that once a riotous situation has begun, police should arrest those engaged in committing illegal conduct when feasible to do so. It is important to note these arrests are targeted as needed to address immediate public safety concerns.

A proper police response is a significant step towards de-escalating a crowd. People's behavior escalates for a variety of reasons, but it is virtually impossible to maintain an elevated escalated state indefinitely. The law enforcement goal is to create time for the crowd to de-escalate and return to rationale thought and lawful behavior. Changing behavior of individuals who are acting out is accomplished when there is time for individuals to move through the escalation curve and consider the implications of their actions. Outreach, efforts to gain compliance, attempts to explain the reason for police conduct, justify the need for community action and carefully assessing the need for immediate action all work to mitigate the impact of law enforcements role in the event. When feasible we should listen to the community, explain our actions and treat them with equity and dignity (LEED). LEED at a group level will likely reduce tension and support legitimacy. Additionally, it is beneficial to view the majority of the crowd as temporarily acting out and if given time they will return to acceptable conduct. The situation is not an "us vs them" incident but rather a police response to escalating event with the likely outcome of a return to acceptable conduct.

Moving the crowd is often the most effective way to create time and disrupt unfavorable crowd dynamics with the limited police resources available. Movement forces the group to breathe normally and focus on issues other than illegal conduct; increasing the potential for de-escalation of an elevated situation. Movement of the crowd is requested, encouraged and if necessary (if legally justified), created through safe utilization of less-lethal options. Moving a crowd with limited direct police contact has proven to dramatically reduce physical confrontations and injuries to all involved parties.

When crowd actions change to illegal conduct, officers have an obligation to preserve public safety and protect property. When feasible, police warnings and dispersal orders should be provided along with the time to permit voluntary crowd compliance. Actions that put the public at risk or present a reasonable belief there is an imminent risk to the community requires police action. At no point should crowd management orders to officers as part of an event suggest they should not respond to observed exigent life safety hazards. It is accepted that life safety takes precedence over incident command and officers must act to protect those on scene. Assuming public safety is in jeopardy, in combination with a dispersal order if feasible, officers should act to move the crowd to avoid further violence incited by uncoordinated crowd dynamics.

Although law enforcement action taken to directly address individual unlawful conduct is preferred, the dynamics of a crowd situation may not make this safe or feasible. Taking action with insufficient officers in relation to crowd size may create unacceptable officer safety risks, heightened risk of injuries to protestors, and the possibility of inciting further violence. This tactical consideration is often lost on those that evaluate police response to crowd control situations. It often becomes impossible to safely arrest in individual in a crowd for criminal conduct. Attempts to do so are routinely countered by acts of violence against police and increased levels of force used. To achieve our desired goal of keeping people safe and protecting property while not escalating an event, we avoid individualized action. Instead our main objective in a riotous protest is crowd movement. Initially this is accomplished by attempting persuasion, along with bike movements. If justified by public safety risk, a dispersal order may be given. If imminent

risk to the community is present, crowd movement will be compelled using bicycle officers or foot officer formations to move groups; supported by appropriate less-lethal options.

I believe the above sets out the law, training, philosophy, policy and overall approach to crowd management and crowd control events as I understand them within the Seattle Police Department. I will now turn to the individual events that occurred between 05/30 and approximately 06/14 and my involvement. I am confident, given the complexity of events, the chaotic nature of day and the multiple angles captured on BWV that there will be substantial video available that will add to my recollection of events.

5/30

I had pre-scheduled time off for the weekend of 5/22-5/31. Earlier in the week I was looped in by SPOC about upcoming demonstrations planned for 5/30. Initially, it was estimated to be a relatively small event with a few hundred potential demonstrators. Our initial deployment was intended to be relatively small, largely consisting of Bikes, ACT, SWAT and prisoner processing. As the week progressed and greater attention nationally became focused on the death of George Floyd, the size of the event grew in scope and size. I discussed the potential deployment with various commanders and began to recommend increased numbers of officers assigned to the event. By mid-week, we were requesting mutual aid and had fleshed out a more robust command element. To my knowledge planning continued for the remainder of the week. While out of town on Friday the 29th I learned that smaller riots, looting, assaults and other acts of violence had occurred in the city tied to potential national demonstrations intended to happen on Saturday. I was very surprised by the news because the information I had was that the intended activities for Friday were reported to be very small. I watched the news and observed that blast balls had been deployed to stop illegal acts by the crowd. It was reported on the news that these deployments were in response to looting, violence and property destruction. I knew this was very significant. SPD had not deployed blast balls in significant numbers in several years. I believed that the use of these tools indicated that something unusual was developing. I later learned that the crowd size was far greater than anticipated and the level of violence was consistent with what we had experienced in earlier May Day type events. I contacted the Incident Commander for the event and asked if he would like me to return. He said yes. I connected with him early Saturday morning and he confirmed he wanted me to respond. I began to return to Seattle. While driving, I listened to news radio that described a highly chaotic environment in the downtown core. The radio stated that acts of violence had happened, the crowd had attempted to overrun police headquarters, damaged property and a report of attempting to start a fire. I also heard of widespread looting, assaults, arrests, attempts to steal police firearms, setting police cars on fire, arson and other acts of violence. I arrived at the precinct and went to SPOC. I was informed that events for the day had shifted from peaceful expression of 1st Amendment rights to a riot. I also learned that our traditional tactics were not working. Bikes and line officers could not move the crowd nor could they gain separation. The size of the crowd appeared to be massive, I would estimate close to 10,000 people at times. I believed based on what I was hearing that police officer lines were about to be overrun. I learned that our munitions were ineffective, and we had to shift to the tool of last resort, CS gas. I also learned we were rapidly running out of most of the munitions assigned to line officers. SWAT was also running out of munitions and we were waiting for mutual aid to respond to resupply our people. I further learned that several officers had been injured during the riot. I met with Capt. Kibbee and was asked to

assume tactical command in the field. The other commanders were attempting to gain control of the incident and allocate newly arrived resources. I was informed that the Mayor had issued an emergency order, which states:

WHEREAS, in my capacity as Mayor, I proclaimed a civil emergency exists in the City of Seattle in the Mayoral Proclamation of Civil Emergency Dated May 30, 2020 at 4:58 P.M.; and

WHEREAS, the facts stated in that proclamation continue to exist as this Order is being issued contemporaneously with the Mayoral Proclamation of Civil Emergency, and additionally reports are incoming about a man with a rifle on the Yesler overpass; and

WHEREAS, it is necessary to use extraordinary measures to protect the public peace, safety and welfare; and

WHEREAS, I believe it is in the best interest of the public safety, that law enforcement be granted the authority to act in the manner contemplated in this Civil Emergency Order; and

WHEREAS, the conditions of this Civil Emergency Order are designed to provide the least necessary restriction on the rights of the public; and

WHEREAS, the civil emergency necessitates the utilization of emergency powers granted to the Mayor pursuant to Seattle Municipal Code, Chapter 10.02 and RCW Chapter 38.52.

WHEREAS' SMC 10.02.020.4.15 authorizes the Mayor to proclaim "such other orders as are imminently necessary for the protection of life and property" and take extraordinary measures to protect the public peace, safety and welfare; and

NOW, THEREFORE,

I, JENNY A. DURKAN AS MAYOR OF THE CITY OF SEATTLE DO ORDER THAT:

SECTION 1: RESTRICTIONS ON PROHIBITED ITEMS

A. A restricted area is imposed in the portion of the City defined at present as bounded approximately on the East by 15th Avenue East, on the South by I90, on the West by Elliott Bay and on the North by Mercer Street.

B. Within this zone, all persons are prohibited from possessing, transporting, purchasing, furnishing or selling any weapon, including, but not limited to: rocks, bottles, pipes, bats, clubs, chains, sharpened signs, shields, gas, road flares, torches, paint balls, light bulbs, any incendiary devices, pry-bars, skateboards, balloons filled with liquid, dimensional lumber with

a dimension greater than 4 inches, or any other objects which can be used for infliction of bodily harm or damage to property.

C. Seattle Police are hereby directed confiscate any weapon identified above or any other implement reasonably perceived or believed to be capable of being used as a weapon found within these boundaries.

D. Any individual who violates this order shall be subject to arrest, as set forth below in Section 4, and confiscation of the prohibited item.

SECTION 4:

Any person found to have knowingly violated this Civil Emergency Order is guilty of Failure to Obey the Mayor's Emergency Order, and upon conviction may be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than One Hundred and Eighty (180) days or both such fine and imprisonment, SMC 10.02.110; 12A.26.040,

SECTION 5:

All mayoral proclamations presently in effect shall remain in full force and effect except that, insofar as any provision of any such prior proclamation is inconsistent with any provision of this proclamation, then the provision of this proclamation shall control.

SECTION 6:

A copy of this Civil Emergency Order shall be delivered to the Governor of the State of Washington and to the County Executive of King County. To the extent practicable, a copy of this Civil Emergency Order shall be made available to all news media within the City and to the general public. In order to give the widest dissemination of this Civil Emergency Order to the public, as many other available means as may be practical shall be used, including but not limited to posting on public facilities and public address systems. SMC 10.02.100.

SECTION 7:

This Civil Emergency Order shall immediately, or as soon as practical, be filed with the City Clerk for presentation to the City Council for ratification and confirmation, modification or rejection, and if rejected this Civil Emergency Order shall be void. The Council shall consider the statements set forth in SMC 10.02.025 and may, by resolution, modify or reject the order. If the City Council modifies or rejects this Civil Emergency Order, said modification or rejection

shall be prospective only, and shall not affect any actions taken prior to the modification or rejection of this Civil Emergency Order. as set forth in Seattle Municipal Code subsection

10.02.020.8.'The Council shall endeavor to act on any order within 48 hours of its being presented to the Council by the Mayor.

The Major also issued a declaration of Civil Emergency. I have only experienced this a few times and I realized that this was truly an exceptional incident. I believed the city was in significant jeopardy of a significant number of people being injured and substantial property damage.

I went to meet with Lt. Dymont. He was coordinating mutual aid. I could hear repeated request for additional munitions. He asked that I respond and assess what was needed and where to assign newly available units. I met up with Bellevue SWAT and was provided blast balls as resupply for units in the field. I rode to 5th and Virginia, linking up with Lt. Nelson. He was working with WSP RDF to stabilize the situation at the intersection. They had pushed out to gain control of Westlake and 6th Ave. I could hear repeated calls for assistance on Pine Street. I initially requested all bikes to Stewart then changed location to Pine. When I arrived it was chaos. Rocks, bottles, lumber and other objects were being thrown at officers. I could see smoke, fires and debris in the street in all three locations. I personally saw many in the crowd with gasmasks, umbrellas and other gear designed to defeat our munitions. Toward the west I could see a police line at about 5th with an estimated 1500 people engaging officers. To the south on 6th there was a line of officers with a group of approximately 300 people engaging the line. To the east it looked as though we were in a desperate situation. The crowd appeared close and were erecting large barricades. I heard SWAT units, Z3, requesting resupply and I interpreted this transmissions as they were about to get overrun. They were almost out less lethal options. If overrun the officer would be at a tactical disadvantage and left only with the option of using higher levels of force to stop attacks. This seemed to be the most at-risk location and I went to the line. I could see a plywood barricade erected by demonstrators a short distance from the police line. The group was using the barriers to defeat crowd control efforts. I could also see another barricade being erected using metal fencing further to the east.

This was an extremely dangerous situation. Officers were getting surrounded with limited ability to get to the West Precinct or move within the downtown core. This severely limited our tactical options. Without the ability to move, officers were locked into protracted struggles with demonstrators. They were outnumbered and facing very large, violent crowds. At that point they were targets for rocks, bottles and other objects thrown at officers. Without space it was impossible to use our traditional tactics to engage the crowd. These conditions also permitted the crowd the opportunity to organize themselves and their riotous activities. We were behind the decision-making curve, at a disadvantage and reacting to evolving events. I felt we had to act to keep officers safe and to make it safer for the demonstrators. I went to 7th and Pine and connected with officers. I observed a 2x4 thrown at officers, along with many other objects. This was the tantamount to aggravated aggressive resistance and it was clear to me, based on law, policy and training, that use of all less lethal munitions were permissible when facing that level of threat. I knew that CS had been authorized earlier in the day and what I observed further justified the use of CS to disrupt the crowd. I could see large crowds engaging the officers. Many of the individuals observed were attempting to assault the officers. The riot had been going on for hours and I believed that all persons not wanting to participate in the riot had left the area. I could see no one "peacefully" demonstrating.

Z3 broadcast they were about to be overrun. Based on all I observed I ordered the launch of munitions and the officers to push east. I ordered officers to move the crowd to the east. This was done to disrupt the activities of the crowd and limit the crowd contagion/dynamics impacting the group. CS and blast balls were used to push east. The barricades put up by the crowd were dismantled and the crowd was moved toward the highway overpass. As we moved, this broke the crowd up into smaller groups less capable of a coordinated response. The size and violence of the crowd made arrests impossible. The goal was simply to disrupt the group rather than a coordinated movement of the group out of the area. We did not have the resources or capabilities to stop the actions of mobile rioters. The groups were very fast and moved away from police lines, attempting to flank units of officers as they moved. By the time we reached the overpass the group had dissipated. It had partially reformed to the south of 9th/8th and Pine.

I met with Bellevue Bikes and units of SPD Bikes. We pushed a group west and south. I reformed the units so they could move south to break up a crowd throwing rocks and bottles. I could see pieces of cement being thrown at officers. I also met with KC TAC 30. The crowd was approaching our line and throwing items at officers. I asked TAC 30 to deploy CS to the south then launched bikes south to Pike with orders to move west on Pike. At that time, we loosely held Pine Street from 8th to Westlake Park. However, as we worked to move units a crowd had reformed behind us on Pine. I believed we had lines holding at 6th and 5th. Bikes pushed west on Pike and I moved on Pine to Westlake. Officers had pushed to 4th largely clearing Pine. As I reached Westlake I moved south to Pike through the park. Two cars were on fire and I heard multiple reports of looting occurring in the downtown core. I watched several people loot businesses and break glass in an effort to gain access. At times, literally hundreds of felonies were occurring. I broadcast to not focus on holding real estate but to keep groups moving. I observed that if the crowd moved then they could not coordinate to assault officers, destroy property or loot buildings. This is consistent with our tactical model for response to civil disturbances. As I rode through the area, I could see mass destruction. Virtually every store on Pine had been broken into with shattered glass everywhere.

I rode to 4th and Pike and ordered officers to hold the intersection so that SFD could respond to put out 2 car fires. Buildings were also in danger of catching fire. Bike lines were thrown up and crowds were present throwing items at officers. I could see evidence of looting at multiple locations. Several stores had been broken into. I was informed at some point that people had broken into Nordstrom's and more importantly there was a report of a fire inside the store. SFD could not respond until the building was secure. W ACT and other assets were dedicated to the building to try and secure the location so the arson could be addressed. I believe I moved west toward 3rd with bike officer to address other looting and acts of violence. While SB on 3rd I saw 200-300 people moving in traffic, damaging property and throwing items at officers. At the US Post Office I saw a group break out two very large panes of glass. I ordered the deployment of blast balls to break up the group and to compel them to move. It was effective and the group continued south. When the group moved away I returned toward the Westlake Park area.

At some point I talked with Capt. Kibbee and we discussed our response to the continued criminal conduct. The numbers and mobility of the people engaged in criminal acts made it impossible for officers to respond and secure a location. There were literally hundreds of people rioting and looting. There were reports of people driving vehicles into buildings to gain access for property to steal. I attempted to deploy officers out in roving groups to deter acts of violence. It would have taken several hundred more officers to secure businesses based on the distances and the numbers engaged in criminal conduct. At 5/Pine as officers held for fire to ensure Nordstrom's was secure. They started to take rocks and bottles. I ordered

the deployment of munitions and the movement of officers to disrupt the attacks and to protect SFD/SPD addressing significant public safety issue. Later a male who had been stabbed was located with what appeared to be life threatening injuries. Officers tried to secure the area and rendered aid until SFD Medics arrived. Later additional munitions were deployed when rocks, bottle and pyrotechnics were thrown at officers. I ordered Bellevue SWAT to deploy to protect officers. We continued to chase looters, deter violence, protect SFD as they responded to calls for service and control access to the area.

Summary

Based on the facts presented all officers had the legal right to be at the location for the day's events; all areas were open to the public.

Prior to my arrival incident command had determined a riot existed in the downtown core. Federal Code defines a riot as:

- (a) As used in this chapter, the term "riot" means a public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

18 USC 2102

Dispersal orders had been given. Refusal to leave created probable cause for arrest.

A person is guilty of failure to disperse if:

1. He congregates with a group of four (4) or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person or substantial harm to property; and
2. He refuses or intentionally fails to obey a public safety order to move, disperse or refrain from specified activities in the immediate vicinity.

SMC 12A.12.020

PC existed for various offences such as pedestrian interference, obstruction and other applicable law violations. Those looting or assaulting others were committing crimes in addition to the other demonstration related offences. By the time I arrived actions of the crowd in the downtown core were in violation of the law.

In [Brinegar v. United States](#), the [U.S. Supreme Court](#) defines probable cause as "where the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed."

As noted above probable cause existed for a variety of offences related to the actions of the crowd.

After developing PC, it is a legitimate policing priority to arrest a suspect who is creating a safety risk to officers and the community. The legality of a detention or seizure of a person is analyzed under the 4th Amendment. The 4th Amendment prohibits unreasonable searches and seizures. The operative term is unreasonable. Reasonable seizures are permitted provided the governmental interest outweighs the rights of the person to individual liberty. Governmental interests can include the enforcement of criminal laws, protection of the public and preservation of evidence.

Tennessee v. Garner is a significant case that provides the framework for analysis of force that can be used by officers to achieve a legitimate police objective. The U.S. Supreme Court established that that a police officer who has probable cause to believe a suspect poses a threat of serious harm to the officer or others may use deadly force to prevent escape. (*Tennessee v. Garner*, 471 U.S. 1 (1985).) The value of the Garner case and its progeny are that they establish the right of officer to use force make an arrest, to end dangerous criminal action and to prevent escape provide the force used is reasonable. The later Graham v. Connor case built on Garner and stated the proper Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. **Graham v. Connor, 490 U.S. 386 (1989)**

The events of 5/30/20 clearly presented a substantial risk of injury to officers, the community and to property. What may have started as an exercise of free speech turned into a coordinated riot. Acts of assault, arson, theft and property destruction were rampant throughout the downtown core. The officers were outnumbered and incapable of addressing individual acts. I believe, based on the information I had and could observe that a riot was ongoing. In a riot it often is impossible to hold individuals accountable for their actions. During this event attempts by officers to intervene were met by attacks from others in the crowd. SPD was seriously outnumbered with an estimated few hundred officers facing the massed crowd action of potentially several thousand. When I first arrived, I observed officers being assaulted by a variety of projectiles, including rocks, bottles, metal pipes, concrete debris, lumber and other dangerous items. Many of these items are potentially lethal threats to officers and would have individually justified high levels of force by officers in response to end the violence. After I arrived, I learned that the crowd had attempted to burn police headquarters with officers inside. This a violent felony that placed officers and the community in grave risk of great bodily harm or death. The crowd had also attempted to ignite a fire in other buildings. The crowd had lit several police cars on fire presenting substantial hazards to the officers and the community. Added to this was the crowd was using tactics to impede our ability to address acts of violence. The crowd used shields, constructed wood barrier, used stolen metal fencing and used improvised barriers such as trash cans to restrict our movement and counter dispersal efforts.

By policy an IC can order a crowd to disperse under SPDM 14.090 when a group of four or more persons create a substantial risk of causing injury to any person or substantial harm to property. It was clear to me based on what I could observe and what I had I learned, that the crowds actions met the classification of a riot and the criteria needed for declaration of an order to disperse. I believed an order had been given and that the Mayor had issued Civil Emergency Order/Proclamation. I believe a curfew order had been

issued for the downtown. Given what I had firsthand knowledge of it was clear that a dispersal order was justified. The use of crowd control tactics and tools had been approved by the incident commander. This had included the use of CS gas due to the level of violence and the unwillingness of an exceptional large crowd to exit the area. Without less lethal munitions the officers had little ability to respond without significantly placing their safety at risk. My assessment when I arrived at 5th and Pine is that if we did not act immediately people's lives were at risk. I ordered the deployment of CS gas to stop assaults on officers. I then ordered movement to disrupt re-formation of violent crowds. At that point all people present were committing acts of violence, property destruction, theft or failure to disperse. The less lethal tools chosen were targeted at those people committing crimes, putting peoples' safety at risk and jeopardizing the property of the community. CS was used to compel the movement. Once moving I kept the crowd moving by using bike officers and foot officers to keep the crowd in motion. When able we reverted to traditional bike/foot tactics to keep riotous crowds in motion. Motion is our friend for, as noted above, it limits the ability of rioters to coordinate criminal conduct.

The officers guided, directed and used munitions when they encountered violence or substantial property destruction. At one point I ordered officers to hold the intersection of 4th and Pike so that fire could enter the area and address two burning vehicles. A nearby structure was also on fire. Slowly the number of rioters began to disperse. As the events began to shift away from crowd management, I observed numerous acts of looting, theft and property destruction. I could see hundreds of people inside businesses, grabbing items and running from the establishment. It included at one time someone driving a car into a jewelry store window to access merchandise. Acts of violence continued, including the life-threatening stabbing of a person in the crowd. I have participated in most of the major demonstration/riots that have occurred in Seattle over the last few decades and have not seen anything like the level of violence, destruction and theft that happened on 5/30.

Per SPD Policy 8.100, "When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force."

De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. (See Section 8.050.) When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.

De-escalation requires **opportunity** to be successful. The opportunity to de-escalate increases significantly with distance and the ability to have standoff/cover. Distance creates time which allows for the assessment of alternative responses to suspect behavior. De-escalation is particularly applicable to persons in crisis situations **when there is limited risk**. De-escalation tactics are much less feasible when encountering non-compliant, violent suspects creating situations of substantially greater risk. Additionally, for De-escalation to be feasible it requires a willingness to engage with officers to effect compliance. Refusal to engage as evidenced by ignoring commands, assaulting officers, continuing to fight, resist detention, and setting fire to business all made it no longer feasible to further de-escalate. Although the risks were high and de-escalation was for the most part not safe nor feasible, officers continued to take substantial steps to de-escalate. They used tactics, teamwork, warnings and verbal commands to gain compliance and avoid the need to use force. The suspects chose to ignore legal orders by officers.

It is a law enforcement priority to make an arrest once PC exists. This particularly true when the actions of suspects put people's safety in jeopardy. If officers have the legal authority to detain an individual and the suspect resists, they may use objectively reasonable force to control the suspect. Officers at close distance from a potentially armed suspect are behind the "decision-making curve". The suspect can act faster than the officers can react. The suspect, unlike an officer, is not slowed by the process of assessing the threat presented and determining what is the reasonable force response. This reactionary gap creates a need for officers to control the suspect. Control can be the use of force to stop illegal activity or to counter activity that puts others at risk. In this case, officers were at a tactical disadvantage throughout the day. As noted in law, policy and training, officers need not compromise their safety for the sake of de-escalation. I believe officers complied with our De-escalation policy to the extent safe and feasible. The day was chaotic, dangerous and spiraling out of control. Frankly without the assistance of mutual aid and the arrival of additional munitions further efforts to control the crowd or limit property damage would have been impossible.

As with all legal seizures law enforcement may use objectively reasonable force to overcome resistance. Force is permissible by policy when it is "objectively reasonable, proportional ... (and) necessary to achieve a law-enforcement objective. The force used must comply with federal and state law and Seattle Police Department policies, training, and rules for specific instruments and devices" SPD Manual 8.200

The reasonableness of force is based on the totality of circumstances known by the officer at the time and weighs the actions of the officer against the rights of the suspect. The force is judged from the perspective of a reasonable officer on the scene, rather than with the benefit 20/20 hindsight. Factors considered when evaluating force is the seriousness of the crime, the level of threat or resistance presented, whether the suspect was posing an immediate threat to officers or a danger to the community, the potential for injury to others, the risk or apparent attempt by the suspect to escape, the conduct of the suspect being confronted (as reasonably perceived by the officer at the time), the time available to an officer to make a decision, the availability of other resources, the training and experience of the officer, and the proximity or access of weapons to the suspect . SPD 8.200

As noted in law and policy, an officers training and experience are relevant to the evaluation of objective reasonableness of force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. SPD Manual 8.200-1 My experience indicated that this event was the worst single day of rioting I had experienced. The size and scope of the destruction and lawlessness made police efforts to regain control questionable. I believed that if we did not use crowd control munitions to disrupt criminal activity great bodily harm or death would come to the community and officers. I believed based on training and experience, supported by law and policy, ordering the use of less lethal munitions was objectively reasonable.

Training, Taser policy and 40-mm policy all state it is permissible to use of less lethal tools to overcome an immediate threat of harm or when the use of the tool would reduce the potential for greater injury if forced to go hands on. Our tools used in the context described meets the law and policy standards for deployment. Use under those circumstances is objectively reasonably, necessary and proportional. As noted in law, policy and training, the use of less lethal tools is permissible to overcome actual resistance or the threat of resistance. We have consistently taught we can use OC, Taser and 40-mm to overcome active resistance with a threat of harm. This fits squarely with the national perspective that less lethal

tools are an intermediate force option deployable to overcome active resistance. Active resistance occurs when an officer encounters behavior that physically counteracts his or her attempt to control, and which creates risk of bodily harm to the officer, subject, and/or other person. Although not specifically stated in policy it does matter that the use of OC will likely reduce the risk of injury to officers and suspects. The threat of harm, as discussed in policy, applies to potential injury to both officer and suspect. Note policy when referring to a "threat of harm" applies the concept to any person. Therefore, the use of less lethal tools is legally permissible to overcome an immediate threat of harm and when going hands on would likely result in greater injury than the use of the tool.

At the point I arrived, I was informed that our typical munitions were not working, and the crowd was not moved or dissuaded from violence or destruction by use of OC or Blast Balls. Due to the violence against officers it was also impossible to close with offenders with resorting to high levels of force and increasing the potential for injury to all involved. I was further informed that CS had been used to affect the crowd, based on size and their motivation, to stop illegal acts. I learned that we had largely exhausted available munitions and that ability for officers to defend themselves was rapidly evaporating. As I have noted CS, although not directional, is based on the level of intrusion, a tool with limited extended impact if the violators leave the area. It has less significant affect on persons, in my experience, than OC, Taser or 40 mm launchers. It was only directed at those committing crimes when deployed. Officers were facing assaultive resistance and responded with a level of force that was substantially less than what would have been legally permissible. Based on the severity of crimes, the immediate threat to officers/others, the suspects actively resisting arrest, the potential influence of the mentality of the crowd, the limited time to make decisions, the lack of more resources, the use of improvised weapons by the crowd against officers and the environment a riot creates, I believe the force used was objectively reasonable, necessary and proportional.

In this incident, the officers had a lawful purpose for seizure, the suspects refused to cooperate and resisted attempts at arrest. The suspects were actively engaged in an acts of violence when confronted by officers. This reasonably demonstrated the suspects willingness to be assaultive. Closing with the suspects would have forced the officers to go hands on. It is rational to assume that officers would have had to use force to control the rioting suspects. Of added concern for officers is a substantial and hostile crowd present who significantly outnumbered officers. It was reasonable to use less lethal tools to overcome resistance, stop violence/property damage in progress and detain a person in a way that creates minimal risk of injury to those involved. By deploying less lethal tools officers were able to eventually overcome resistance, maintain standoff and address any additional threats presented.

I believe the decisions I made and the force I ordered met the Graham standards requiring that force used by officers be objectively reasonable. To my knowledge the acts of officers and the decisions I made were consistent with law, policy and training. Law, policy and training defines what is objectively reasonable. I further believe that these standards are consistent with national best practices. Officers were addressing a violent riot in progress. Based on the totality of the circumstances available at the time objectively reasonable force was ordered to overcome aggravated assaultive resistance. The force used was proportional to the resistance encountered. The force decisions and orders were modulated once the suspects stopped resisting lawful authority.

5/31

On 6/1 I was the Deputy Ops for the day's events. I prepped the briefing and delivered the operational plan to officers. There were concerns based on the prior day's events that additional violent actions would occur. It was known that a march would likely occur. Below are the briefing notes for the day.



Commander's Intent

Our initial priority is to provide high visibility deployment in the Downtown core. In the event of new intelligence/activity, we will have the ability to shift resources to cover other areas/precincts. The mission of these initial resources is deterrence through presence at potential target locations.

Our goal is to be able to quickly and effectively respond to any crowd management events that come to our attention. My expectation is that our assigned resources will be able to manage an event on their own or in concert with one or both other platoons anywhere in the City.

In the event of marches, we will support them moving on City Streets until any act of violence or serious property damage occurs. To ensure public safety, we will direct marches to go with the flow of traffic. If possible, we will not allow protest marches to stop and intentionally block traffic. If command determines that we need to disperse any crowd, a dispersal order will be issued and we will deliberately move the crowd to a safe location until it disperses.

I expect quick intervention to address assaults or conditions that pose an immediate threat to public safety in line with Department Policy, training, and best practices. If there is an arrest to be made, sergeants must ensure that we have the resources and time to affect the arrest.

Commanders should familiarize themselves with department policy, training and best practices.



May 31 Operations

SPOC Command/City Wide

Asst. Chief Mahaffey

IC

A/C Mahaffey

Ops

Captain Allen

Dep Ops

LT John Brooks

Crowd Management Platoon 1

LT Jim Dymont

- Sgt. Moore, Sgt. Hill, A/Sgt. Eastman, A/Sgt. Gordillo, Sgt. Martin, Sgt. Tietgen, Sgt. Page, UOF Sgt. Waltz SPD SWAT Element

Crowd Management Platoon 2

Lt. Alcantara

- Sgt. Adams, Sgt. Sylvester, Sgt. Ziemer, Sgt. Hylton, A/Sgt. Johnson, Sgt. Bauer, Sgt. Page, UOF Sgt. Campbell

Lt. Floyd

2nd Watch all assigned West Precinct

2nd Watch West support NG and visibility patrols West



May Day Operations

Chain of Command

TAC 30

KCSO

UOF/Prisoner Proc.

- Sgt. Byrd, Sgt. Waltz, Sgt. Campbell

SWAT

ABS

Intel

Traffic

W Prct

911 Call Response

LT Aargard

LT Bergmann

LT Arata

LT Ballingham

LT Hay/LT Clenna



May 31 Operations

Tactical Situation



Operations

Schedule of Events:

- 1000:** SPOC activated.
- 1200:** All event roll calls.
- 1300:** On Station



Intel Briefing




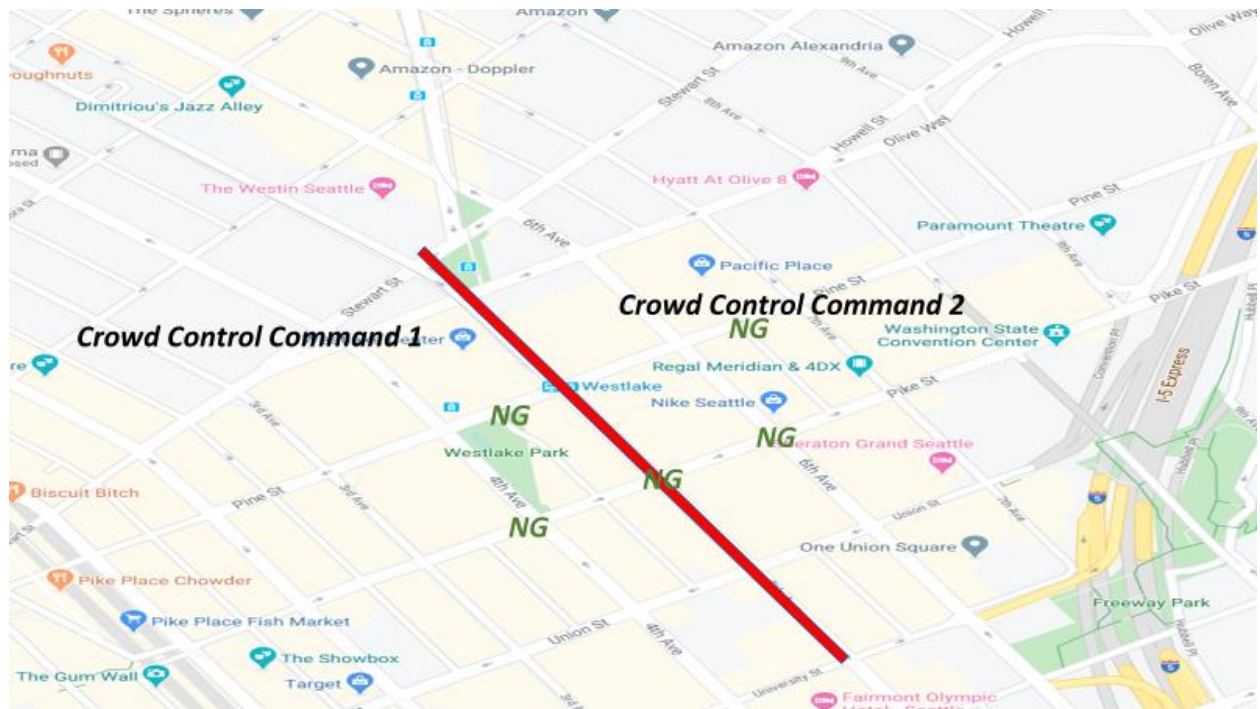
Mission:

The mission of the Seattle Police Department is to keep people safe, enforce the law and preserve order. The Seattle Police response priorities are: Life Safety, Incident Stabilization, Property Conservation, and Crime Scene Preservation.



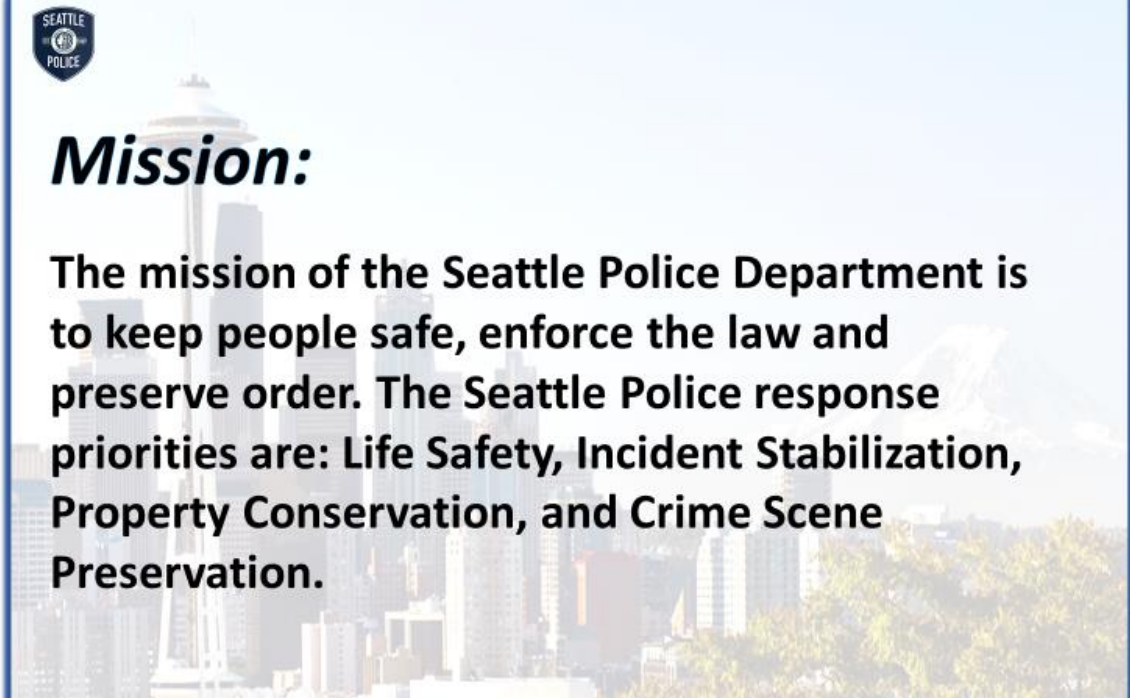
May 31 Operational Plan

- **We will facilitate events**
- **Tactics will be used to reduce the potential for conflict during the march or demonstration**
- **Any acts of violence or significant property damage will not be tolerated**
- **Actions by anyone that creates significant public safety hazards will not be permitted, this includes blocking traffic, access to the structure**



Mission:

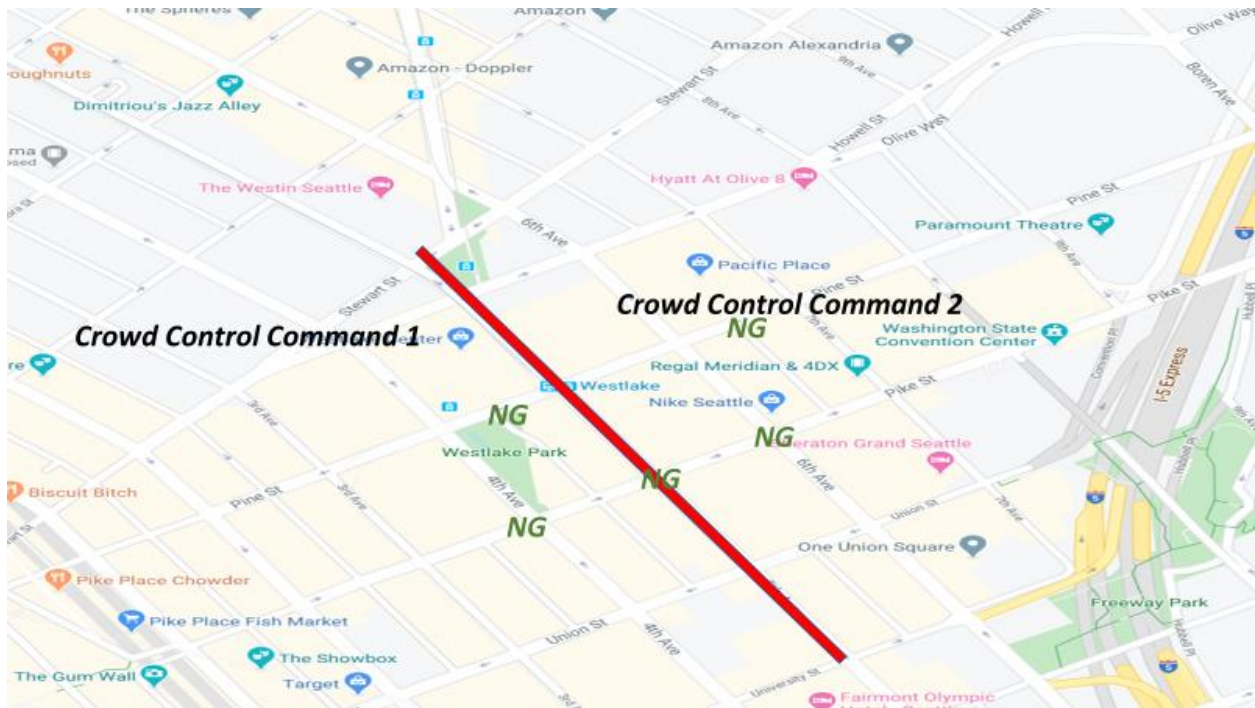
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May 31 Operational Plan

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Operational Plan

Crowd Management Platoons

Crowd Management are intended to manage an event on their own or in concert with other platoons anywhere in the City.

Initial deployment

- ❖ Crowd Control Group 1 Downtown Core
 - 3rd-5th Ave- Union to Stewart
- ❖ Crowd Control Group 2
 - 5th-7th Ave-Union to Stewart
- National Guard Pike/Pine with 2nd Watch
- Tac 30 W Prct
- Precinct Area Commands



Operational Plan

- Traffic Section
 - Will initially be assigned to facilitate the safe movement in the event marches develop
- SWAT
 - Provides specialized tactical response as needed
- Bomb Squad
 - Will sweep designated areas and provide hazardous device response and mitigation
- Apparatus Response Teams
 - Assist in dismantling protest devices (i.e. "sleeping dragons.")
- Use of Force/Prisoner Transport
 - Responsible for transporting arrests and initial Use of Force documentation.

Rationale for Police Action Based on Safety Concerns

Police may limit the time, place and manner of the exercise 1st Amendment rights

The limitation must be *content neutral*, narrowly tailored to serve *significant governmental purpose* and provide ample *alternative* channels of communication

Recent SMC case stated “ blocking highways does not constitute legally free speech. Disrupting traffic is dangerous, and can be fatal, both to protesters and to the public, especially if emergency responders cannot traverse public roads.”

- Warn demonstrators and attempt to gain compliance
- If required arrest for pedestrian interference
- Objectively reasonable force may be used
- **BWV**



Rules of Engagement

- Unpermitted marches
- Marching against flow of traffic
- Open Carry
- Freeway access
- Block or attempt to obstruct your movement
- Improvised weapons
- Decision to move crowd as a whole at direction of IC
- Stay cohesive, work as a group, be cognizant of what is going on around you in addition to the protestors.

Detailed Rules of Engagement Provided in Briefing Packet



Rules of Engagement

UOF rules

- Life Safety and Significant property damage, revert to IC when stabilized feasible
- CS is option when we have lost the ability to hold individuals accountable
- Blue Nose exemption

Detailed Rules of Engagement Provided in Briefing Packet



Individual Use of Force

If Feasible we expect you to act in a coordinated manner to address criminal activity

Give warning if feasible

O/C - Blast balls (Individual use): Protect yourself, others or prevent significant property damage.

CS is permitted for deployment

Must have a specific target and attempt to make an arrest if it is safe/possible to do so.

Once issue resolved returns to control of IC



Crowd Control

o

Crowd Control/Dispersal Incident Commander or designee controls chemical agents/munitions; unless protection of self, other, or property damage (per above).

Dispersal orders will be given unless exigency exist

We will declare emergency **RIOT when applicable authorizing crowd control munitions deployment**

Will provide a route for crowd to disperse.



Major Events

Active shooter - follow training and act to stop threat

Rescue Task Force

Unified Command with SFD

Device - see it report it

Mass Casualty event attempt to stabilize

Unified Command with SFD

Evacuation of injured



Logistics

Mandatory Equipment:

- ***GAS MASK REQUIRED***

- All assigned personnel should have eye protection
- Everyone should have immediate access to UO gear
- Crowd Control munitions and cold fire should be carried by trained personnel
- All Crowd Control units should have immediate access to transportation and be prepared to respond citywide
- Have appropriate PPE (N95 mask/gloves) on person and use per Department guidance
 - Use when social distancing is not feasible
 - UOF/Prisoner processing should use PPE



Logistics

Communications:

Bikes and RDF from North, East, South and SW will monitor their normal Precinct Zone Radio channels until directed to switch to the Event Ops TAC channel.

All other squads/units will monitor **1(s)** after roll call.

Event Ops
Traffic

1(s)

On 5/31 we anticipated the assembly of a large crowds that would protest the horrific events that had occurred in Minneapolis. It was further anticipated, based on the prior day's events, that there was a potential for some people in crowd to cause property destruction and acts of violence. Large numbers of

people began to enter the downtown core. It was intended to use traditional tactics to address the groups. In essence we would guide, assist and direct the group in a way that would support their ability to express their first amendment rights but avoid public safety concerns. We in general supported the demonstrations that occurred. We did direct groups in certain ways to avoid the potential for property destruction based on the acts of the prior days. This consisted of limiting access to Police Headquarters which had been the flash point for acts of property destruction and violence. Otherwise the groups were supported in their movement through the downtown core.

Our bike and ACT officers assisted with guiding the crowds on their march. Lt. Dymont reached out to march organizers in an effort to coordinate our efforts. They were cooperative but did point out that people in the crowd were intent on causing problems, including property destruction. During one of the initial events rocks and bottles were thrown at officers. A dispersal was given but when the crowd returned to a peaceful protest, we modulated our approach and permitted the continuation of the event. Crowd size was large, 1000-1500. This is substantially larger than routine events in Seattle that often are less than a 100 people involved in the march. We leapfrogged north on 4th as the march progressed. We tried to be visible as both a deterrent to potential criminal acts and to facilitate the safe movement of the group.

I believe officers tried to move north on 4th from approximately Seneca and one of them was assaulted by members of the crowd. Officers made arrests for assault and were attacked by members of the crowd. I could see them surrounded by large numbers of black clad individuals. They were struggling with the group, appeared to be actively attempting to defend themselves from attack and being pinned against the wall of a building. I took this to be tremendously dangerous. They were at a disadvantage. They appeared to be close to being overwhelmed. At some point I learned that an officer was injured, and they were requesting aid. I learned that one of the officers had been sprayed in the face with OC/bear spray. This is extremely disorientating and puts the officer in position where they cannot defend themselves. It also poses the potential of losing control of their weapon and other tools that puts their lives in jeopardy and potentially those of the community.

When I observed the situation, I felt we had to act to disrupt the crowd or officers would be gravely injured or even killed. I ordered the use of crowd control munitions to stop the acts of violence. I ordered the use of OC/blast balls to create space to extract the officers and get them aid. We had also taken rocks, bottles and cans from the crowd. We were able to gain distance with the use of munitions and I ordered officers to not deploy CS because we had achieved our tactical goals of stopping violence and rescuing the officers.

SPD Manual Section 14.090 (10) states:

10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force

The authorized use of OC in crowd management situations involving violent activity shall have as a primary objective at least one of the following:

- Defend oneself
- Defend someone else
- Prevent significant destruction of property

I believed the use of crowd control munitions was clearly permitted under the above manual section on both an individual and command basis. The use of these devices was done to protect the officers and to stop the need to escalate to higher levels of force. Once stabilized force was modulated, we returned to escorting the march.

This group moved east and proceeded to march around Capitol and First hill. We received information that substantial numbers of people were joining the demonstration. Per the Mayor's orders we attempted to keep the crowd to the east and out of the downtown core. Curfew was in place that restricted access to downtown. We tried to accomplish this goal but became impossible as groups were able to move around officer's base on the numbers of demonstrator's present. Several PA announcements were given informing the group of the Mayor's curfew and the crowd responded by throwing a bottle at the PIU. It was recognized this was futile and the group was permitted to return to Westlake. We advised they must vacate the park at the direction of Mayor. Car 21 gave a dispersal order. When crowd had not dispersed, foot and bike officer's moved the group west, then south to Pike then east to Boren. Officers were taking rocks and bottles, but we did not respond with less lethal munitions. We pushed the group and were largely able to do so with minimal UOF. Eventually the group largely broke up without significant incident.

In this incident, the officers had a lawful purpose for seizure, the suspects refused to cooperate, continued to demonstrate after an order to disperse, and resisted attempts to compel them to leave the area. The Mayor had issued a curfew and wanted access to the downtown core limited. We were ordered by the Mayor to remove demonstrators from the area. The suspects were actively engaged in demonstrations that were illegal. Of added concern for officers is a substantial and hostile crowd present who significantly outnumbered officers. Active resistance in the context of the event would justify officer's response with tools and training to overcome the resistance. It was reasonable to use less lethal tools to overcome resistance, stop violence/property damage in progress and detain a person in a way that creates minimal risk of injury to those involved. When and if deployed, less lethal tools officers were used to overcome resistance, maintain standoff and address any additional threats presented. Per policy tools, when used were applied by officers to protect themselves, others or to stop significant property damage. It was employed to stop immediate threats of harm and when going hands on would create further risk of injury.

I believe the decisions I made met the Graham standards requiring that force used by officers be objectively reasonable, necessary and proportional. To my knowledge the acts of officers and the decisions I made were consistent with law, policy and training. Law, policy and training defines what is objectively reasonable. I further believe that these standards are consistent with national best practices. Officers were addressing a demonstration in progress. The force used was proportional to the resistance encountered, often substantially less than what would have been legally permissible. The force decisions and orders were modulated once the suspects stopped resisting lawful authority.

6/1

On 6/1 I was the Deputy Ops for the day's events. I prepped the briefing and delivered the operational plan to officers. There was concerns based on the prior days events that additional violent actions would occur. It was known that a march would likely occur. Below is the briefing notes for the day.

Briefing Sheet

June 1, 2020

Operational Period 1200-2300

Opening Comments A/C Hirjak and Capt. Allen

Commanders Intent Capt. Allen

Tactical situation

COC

City Wide IC A/C Hirjak/Mahaffey

IC Capt. Allen

Ops Chief Lt. Brooks

Crowd Management Group 1

Lt. Dymont

Crowd Management Group 2

Lt. Alcantara

UOF Lt. Aagard

SWAT Lt. Bergman

ABS Lt. Arata

Intel Lt. Ballingham

Traffic Lt. Hay/Lt. Clenna

Detective TF Lt. Underwood

ART Sgt. Carullo

Schedule of events

1000 SPOC Activated

1230 Officers monitoring all locations Westlake

Demob TBD

Intel Briefing

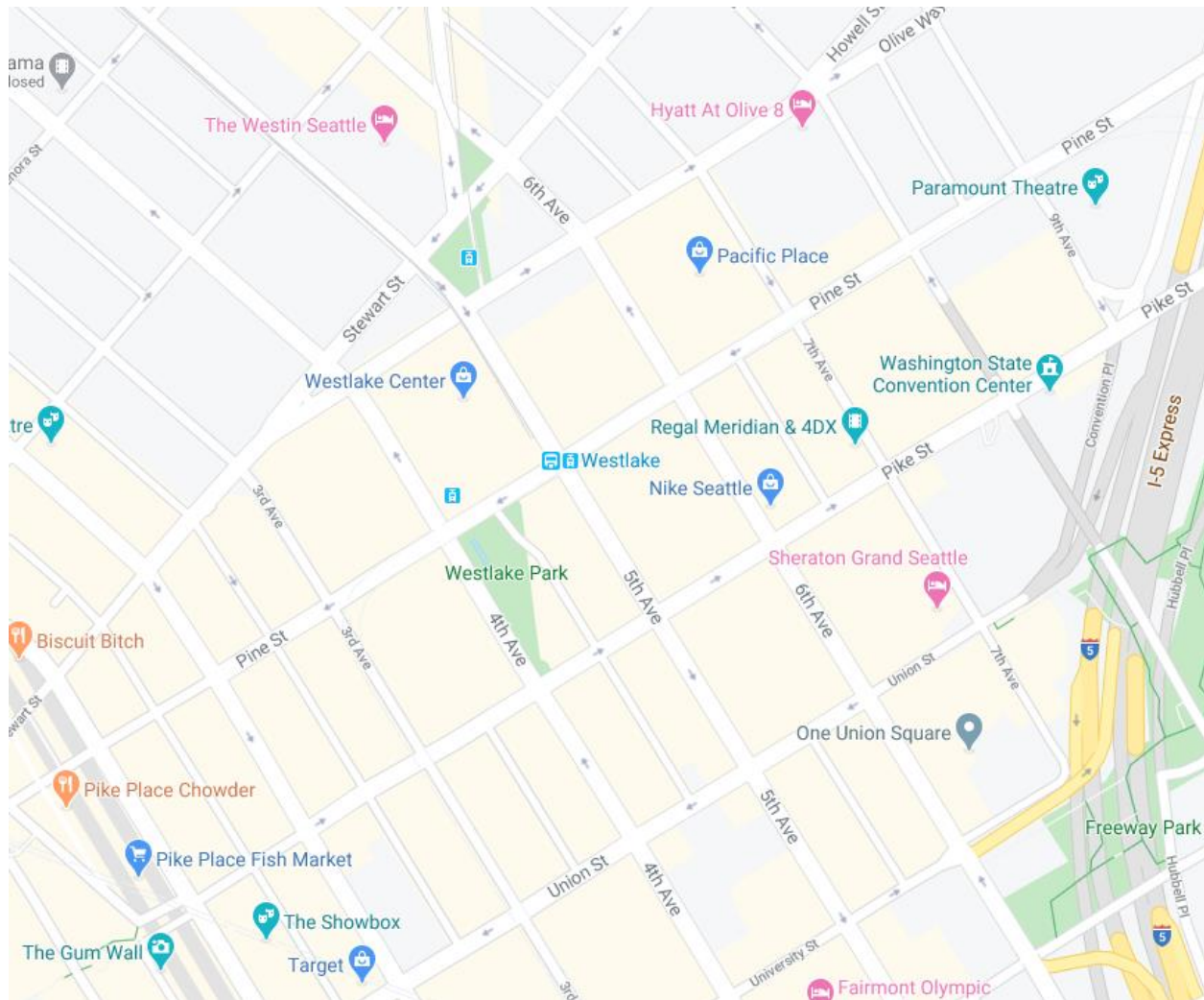
Lt. Ballingham

Event

- Respond to evolving events

Mission:

The mission of the Seattle Police Department is to keep people safe, enforce the law and preserve order. The Seattle Police response priorities are: Life Safety, Incident Stabilization, Property Conservation, and Crime Scene Preservation.



Operational Plan

- We will facilitate the event.
- Tactics will be used to reduce the potential for conflict during the parade
- Actions by anyone that creates significant public safety hazards will not be permitted, this includes blocking traffic, access to the structure

Crowd Management Platoons

Crowd Management are intended to manage an event on their own or in concert with other platoons anywhere in the City.

Initial deployment

❖ **Crowd Control Group 1 Downtown Core East**

- ❖ **Sgt. Moore, Sgt. Hill, A/Sgt. Eastman, A/Sgt. Gordillo, Sgt. Martin, Sgt. Tietgen, Sgt. Page, UOF Sgt. Waltz SPD SWAT Element**

❖ **Crowd Control Group 2 Downtown Core West**

- ❖ **Sgt. Adams, Sgt. Sylvester, Sgt. Ziemer, Sgt. Hylton, A/Sgt. Johnson , Sgt. Bauer, Sgt. Page, UOF Sgt. Campbell**

2nd Watch Precinct Area Command

2nd Watch West support NG and visibility patrols West

KCSO 911 Response West Precinct

Crowd Control Group Rotation

➤ **Traffic Section**

- **Will initially be assigned to facilitate the safe transit march if any**

➤ **SWAT**

Provides specialized tactical response if needed

➤ **Bomb Squad**

- **Available**

➤ **Apparatus Response Teams**

- **Assist in dismantling protest devices (i.e. “sleeping dragons.”)**

➤ **Use of Force/Prisoner Transport**

- **Responsible for transporting arrests and initial Use of Force documentation.**

Rationale for action

- **Police may limit the time, place and manner of the exercise 1st Amendment rights**
- **The limitation must be *content neutral*, narrowly tailored to serve *significant governmental purpose* and provide ample *alternative* channels of communication**
- **Caselaw states that “ blocking highways does not constitute legally free speech. Disrupting traffic is dangerous, and can be fatal, both to protesters and to the public, especially if emergency responders cannot traverse public roads.”**
 - **Warn demonstrators and attempt to gain compliance**

- If required arrest for pedestrian interference
- Objectively reasonable force may be used

BWV

Rules of Engagement:

ENFORCE THE LAW

Unpermitted Marching will be allowed as long members of the group do not engage in any criminal act or exhibit behaviors that present an immediate threat to public safety. We will facilitate a march to the best of our capabilities even though the event is not permitted as per past practice.

Marching against the flow of traffic will not be permitted as it creates a danger to marchers, other motorists, and officers. This should be done with in a controlled, organized

Open Carry- permitted unless the removed, drawn or placed in a manner that is intimidating.

Freeways- Potential for attempt take them-Think ahead to be in position to block them before group gets there. State Patrol will have limited resources available to assist us.

Warn those in the crowd who attempt to block and or obstruct your movements not to do so. If your warning is ignored and your movements are actively being obstructed, arrest is appropriate if it can be done safely.

Improvised weapons if can articulate based on experience that use of a weapon to intimidate, stop, id and confiscate

Any decisions to move the crowd as whole will be at the direction of the IC

Decision to move crowd as a whole at direction of IC

UOF rules

- Life Safety and Significant property damage, revert to IC when stabilized feasible
- CS is option when we have lost the ability to hold individuals accountable
- Blue Nose exemption-available

Detailed ROE in briefing packet

Use of Force:

Individual

We expect you to act in a manner consistent with law, policy and training

All force needs to be Objectively Reasonable and individually justifiable. All force *Must* be reported.

O/C-Blast balls (Individual use): Protect yourself, others or prevent significant property damage.

CS is permitted for deployment

Must have a specific target and attempt to make an arrest if it is safe/possible to do so.

Once issue resolved returns to control of IC

Provide aid to those exposed to OC when feasible.

Able to account for each use and why it was necessary.

Crowd Control/Dispersal Incident Commander or designee controls chemical agents/munitions; unless protection of self, other, or property damage (per above).

Dispersal orders will be given unless exigency exist

We will declare emergency RIOT when applicable authorizing crowd control munitions deployment

Will provide a route for crowd to disperse.

If Major Event:

Active shooter follow training and act to stop threat,

RTF,

Unified command

Device-see it and report it

Mass casualty event we work to for an evacuation corridor and attempt to stabilize event.

Unified Command with SFD

Logistics

Mandatory Equipment:

- GAS MASK Required
- All assigned personnel should have eye protection
- Everyone should have immediate access to UO gear
- Crowd Control munitions and cold fire should be carried by trained personnel including CS
- All Crowd Control units should have immediate access to transportation and be prepared to respond citywide
- Have appropriate PPE (N95 mask/gloves) on person and use per Department guidance
 - Use when social distancing is not feasible

- UOF/Prisoner processing should use PPE

Sgt. Kelly SPOC

Comms:

1(s) monitored for event
traffic

Snacks and water provided van

Snacks Provided

Inclement Weather

Sgt.'s plan rotation accordingly

QUESTIONS?

Captain Allen Closing Comments

Dispersal order:

"I am (rank and name) of the Seattle Police Department. I am now issuing a public safety order to disperse and I command all those assemble at (specific location) to immediately disperse, which means leave this area. If you do not do so, you may be arrested or subject to other police action. Other police action could include the use of chemical agents or less-lethal munitions, which may inflict significant pain or result in serious injury. If you remain in the area just described, regardless of your purpose, you will be in violation of city and state law. The following routes of dispersal are available: (routes). You have (reasonable amount of time) minutes to disperse."

Impacting the days operations that was different from prior events was the lack of availability of Less Lethal Munitions. Supplies of munitions had been largely exhausted in the days before and many options were severely limited. Mutual aid had been requested to provide less lethal munitions. Most of the mutual aid provided came in the form of CS gas and some OC dispersal options. Because of the lack of capability, I had authorized the issuance of CS to patrol CART trained personnel. I asked Sgt. Reese and a SWAT Team member to conduct training on the deployment of these munitions. Although the level of impact CS has on a person in the crowd is consistent with other force options the use of CS was operationally used as the last resort when attempting to manage a riot. We had issued CS to patrol prior to these events with understanding that other options are not effective in truly exigent circumstances. Since the Mardi Gras riots, we had not used CS in the field. It had been almost 20 years since the prior CS deployment. It appeared that it was unlikely that we would use CS based on our operational history. It is difficult to store, and it has an expiration date. These operational issues led to the withdrawal of CS from patrol CART. CS had largely been shifted to SWAT because they were more likely to use it and were better set up operationally to manage CS. This was consistent with our experience where it was understood that the likelihood of using CS by patrol was very small even though under certain situations it is the only tool capable of addressing very large hostile and confrontational crowds.

The critics of the use of CS often cite Geneva Conventions as restricting the use of CS. It is prohibited in warfare because it would be used to disorient a soldier and making it easier for the opposition to kill the impacted person. In contrast CS used by SPD is a tool of last resort and only when the risks to people's lives are substantial. It is used in response to officers or community members being attacked. We are not moving toward the suspects, the crowd is coming to us and we are in a defensive posture. The officers or people in the community are the object of the violent acts of the crowd and CS is used to disrupt the violent acts of the crowd. It was used only after multiple warnings and dispersal orders. Opportunities to avoid confrontation were provided to the crowd. Consistent with our crowd management philosophy, their exercise of 1st amendment rights was not curtailed and only limited to not doing acts of violence or substantial property crime. The use of all less lethal tools occurred only after the demonstration had transitioned from a protest to a riot. It must be noted that CS is still used internationally by police and by the military for crowd control purposes. Its value rests in its ability to impact large crowds when other options are ineffective. In keeping with my interpretation of our crowd control philosophy, I consistently stated that if less lethal tools were required to stabilize an event, to protect themselves or others or to stop substantial property damage, that we would lead with OC, then blast balls and only use CS in life safety emergency. The use of CS and 40 mm launchers was later approved by Chief in a temporary order. CS is not covered by the manual and currently there are no limits on who can be designated to carry the munitions or guidance on how it was deployed. In prior policy this was more directly addressed, and I relied on my experience to guide decision making on when to deploy. In essence these tools would only be used in exigent, emergency situations where people were at risk of great bodily harm or death if action was taken to address the threat.

40 mm launchers are covered in policy and they are not permitted to be used for crowd control. I believe the policy is stating that the 40 cannot be used to indiscriminately fire into a crowd to move the crowd. This is against best practices and the intent of our policy. However, I do not believe that a 40 cannot be used during a crowd control event to address a specific target that is a threat of harm to someone. 40 mm are never fired indiscriminately and can only be used against a specific target to address a threat of harm to officers or others; or when going hands on would likely result in injury to someone. During these events that is how the tool was used. I do not see that this approach is inconsistent with policy. This was also later temporarily amended by the Chief to permit deployment during a crowd control incident. To my knowledge they were not used when deployed during these events and if they were deployed, they were used at direct targets to stop specific illegal acts.

All of these tools are categorized as "less lethal" because often the alternative, specifically when addressing threats to officers or the community, is the use of very high levels of force. Traditional response to riots/crowd control incidents is the reliance of batons to address a safety threat likely resulting in significantly greater injury to all involved. My experience is that use of less lethal tools reduces the risk of injury when compared to using batons against a crowd. As I note above less lethal tools are de-escalating devices that typically lessen or deter the degree of force required, provide an opportunity for a suspect to disengage and if resistance continues the potential for injury is minimal compared to other options. All of these devices are used to stop a behavior and are not intended to injure the suspect.

After the briefing officers were deployed in and around the area of Westlake Park. A large crowd began to assemble. The plan was to escort and guide the group on an anticipated march through the Downtown core. It was noted by officers that people in the group had masked up, which is consistent with "black block" type demonstrators. They have historically been very confrontational with police. The group also

has been known to cause significant property destruction during these events. It was also noted that people in the group carried leaf blowers which are used by them to counter the effects of CS. The crowd grew to very large numbers. The crowd indicated they want to march to the courthouse and back to Westlake Park. During the march I was struck by a rock thrown from the crowd. Some in the group began to mask up. Estimated crowd size was 6000+ and stated they wanted to go to the East Precinct. The group approached the police line at 11th and Pine. There had already been looting and arrests made. The group arrived and formed their own line across from the police fence line.

The line stabilized and the large crowd encircled the East Precinct. The event was relatively static until approximately 2100 hours. I could see many "black block" type people in the crowd. At some point several people were observed deploying umbrellas. These are intended to thwart OC deployed by officers and obscure officer vision into the group. I literally observed a wall of umbrellas in the front few rows of the crowd. This appeared to be a coordinated response. Numerous people were wearing goggles, gas masks and helmets. Some people had bats and most had heavy backpacks with unknown contents.

The group began to push on the fence line. Officers attempted to retain control of fence and keep people back. The crowd surged and pushed hard on the fence eastbound on Pine from 11th. The fence buckled and a separation was created. Rocks and bottles were being thrown at the line. I observed the southernmost section buckle and it appeared the crowd was trying to collapse the fence. I saw a large rock of concrete block land on the ground. Significant numbers of officers were stationed behind the line and were subject to potential injury from the projectiles. I observed a smaller statured officer at the line that was pulled into the crowd and looked like they were about to be trampled by the crowd and pinned by the fencing. At about the same time a person in the crowd sprayed East Act officers with OC spray. At this point I believed, based on my observations "That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed." I further believed that the facts present and the risk to officers justified the use of Less Lethal tools to stop threats of harm, to protect officers and to stop substantial property damage. During this time, it looked like it was raining rocks, bottles, metal and cans. We believed frozen water bottles were thrown at the lines. I observed several officers struck by items causing injury. I saw a large rock strike an officer. I saw a piece of concrete the size of two fists strike an officer's shield. I believed some sort of improvised launcher was hurling chunks of cement and rock at the crowd. I later learned an officer was significantly injured during the melee. I believe two officers had to go to the hospital with one officer potentially losing his vision.

Based on the significant risk to officers, the likelihood of them suffering substantial bodily harm or death, I ordered the use of less lethal tools. I first order OC and blast balls consistent with our progressive force response. The crowd continued to assault officer with little impact from munitions. I believed we were facing a riot. Based on what I observed, and the level of violence directed at officers I did not believe the munitions available would stop the assaults. We also had severely limited numbers of blast balls available at that time. I thought we had likely exhausted our supply in the first deployment. As assaults had not halted, I ordered the use CS to stop the attacks and disrupt the violence. All people in the crowd that I could see were part of the violence. They either were blocking the munitions deployed by officers or were throwing items at the line. A plan was implemented to block 11th to southbound and northbound movement with lines of officers. Bike officers pushed west on Pine to disrupt the crowd. They pushed across Broadway, then returned to 11th, pushing northbound from the intersection. Throughout the movements I was getting repeated reports of rocks, bottles and pyrotechnics thrown at officers.

I declared the event a riot. Several PA announcements were done ordering a dispersal. The group attacked the line SB on 11th toward Pine. Dumpsters were rolled at officers and rocks were thrown at the line. Bike and other officers moved the group north to disrupt the criminal activity. The demonstrators then broke into groups and marched around the area. Officers continued to monitor events and the crowd.

Based on the facts available at the time of the incident the involved officers had the legal right to be at the location; an area open to the public.

The officers had legal authority, probable cause, to make an arrest based for assault, property damage, failure to disperse or other potential crimes.

In the current incident, numerous attempts were made to de-escalate and gain compliance. A substantial number of PA announcements requesting compliance and eventually ordering dispersal gave the suspects ample opportunity to comply. Action was only taken when assaults began on officers. Once assaulted, de-escalation is no longer safe nor feasible. Officers were outnumbered by a hostile and violent crowd. The risk to officer's in this environment limits de-escalation options. When the suspects failed to comply with requests by police, the officers used force to control the suspect's assaults.

At the distance, the suspects were contacted and due to the environment, practical de-escalation options were limited. De-escalation requires opportunity to be successful. The opportunity to de-escalate increases significantly with distance and the ability to have standoff/cover. Distance creates time which allows for the assessment of alternative responses to suspect behavior. De-escalation is particularly applicable to persons in crisis situations when there is limited risk. De-escalation tactics are much less feasible when encountering non-compliant, violent suspects creating situations of substantially greater risk. Additionally, for De-escalation to be feasible it requires a willingness to engage with officers to effect compliance. Refusal to engage as evidenced by ignoring commands, continuing to fight and resist detention, made it no longer feasible to further de-escalate. Although the risks were high and de-escalation was not safe nor feasible, officers continued to take substantial steps to de-escalate. They used tactics, teamwork, warnings and verbal commands to gain compliance and avoid the need to use force. The suspects chose to ignore legal orders by officers.

It is a law enforcement priority to make an arrest once PC exists. It is a further priority to act to protect people and property. If officers have the legal authority to detain an individual and the suspect resists, they may use objectively reasonable force to control the suspect. Officers at close distance from a armed suspects are behind the "decision-making curve". The suspect can act faster than the officers can react. The suspect, unlike an officer, is not slowed by the process of assessing the threat presented and determining what is the reasonable force response. This reactionary gap creates a need for officers to close and control the suspect when supported by appropriate legal authority. In this case officers were at a tactical disadvantage until the suspects was secured or the assaults stopped. As noted in law, policy and training, officers need not compromise their safety for the sake of de-escalation. I find the officers complied with our De-escalation policy to the extent safe and feasible.

As noted in law and policy an officers training and experience are relevant to the evaluation of objective reasonableness of force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. SPD Manual 8.200-1 It was reasonable, based on training and experience, to

assume the resistance offered by the suspects during the riot, was dangerous to officers and the community. Closing with the suspects presented greater risk to officers. It was reasonable to use tools to stop the immediate threat of harm, to reduce the potential for injury and to facilitate our law enforcement objective of preserving order and reducing the risk to those involved.

In this incident, the officers had a lawful purpose for seizure, the suspects refused to cooperate and resisted attempts at arrest. Numerous efforts were made to de-escalate without affect. When force was used the suspects were actively engaged in an acts of violence directed at officers. This reasonably demonstrated the suspects willingness to be assaultive. Closing with the suspects would have forced the officers to go hands on and use force options more likely to cause injury. Of added concern for officers was the substantial and hostile crowd present who significantly outnumbered officers. It was reasonable to use less lethal tools to overcome assaultive resistance, stop violence/property damage in progress and detain persons, when feasible, in a way that creates minimal risk of injury to those involved. By deploying less lethal tools officers were able to eventually overcome resistance, maintain standoff and address any additional threats presented.

The officers met the Graham standards defining objectively reasonable force. The officers were addressing an in-progress incident. Based on the totality of the circumstances available at the time the officers used objectively reasonable force to overcome active assaultive resistance. The severity of the crime was substantial, the suspects posed an immediate threat to officers, they were resisting arrest, the crowd mentality was impacting events, the officers had limited time to respond, they had limited resources to address the violence, the suspects were using improvised weapons and the potential for officer injury was extreme. The force used was proportional to the resistance encountered. In fact, the force used was substantially less than what would have been legally permissible in response to the resistance encountered. The force was modulated once the suspects stopped resisting lawful authority. I believe the decisions I made and the force I ordered met the Graham standards requiring that force used by officers be objectively reasonable, necessary and proportional. To my knowledge the actions of officers and the decisions I made were consistent with law, policy and training. Law, policy and training defines what is objectively reasonable. I further believe that these standards are consistent with national best practices. Officers were addressing a violent riot in progress. Based on the totality of the circumstances available at the time objectively reasonable force was ordered to overcome aggravated assaultive resistance. The force ordered was proportional to the resistance encountered, often substantially less than what would have been legally permissible. The force decisions and orders were modulated once the suspects stopped resisting lawful authority.

6/2

On 6/ I was the Deputy Ops for the day's events. I prepped the briefing and delivered the operational plan to officers. There was concern based on the prior days events that additional violent actions would occur. Initially there was a march downtown that was peaceful. Several events seemed to be occurring during the day, largely without incident. Significant numbers of people began to arrive at Westlake. We had talked to some people representing the groups in the hopes of collaborating on a demonstration that would support the exercise of free speech and maintain the safety of those involved. The group marched to City Hall. Eventually a group headed toward EOC. Bike officers were deployed to that location while another large march was also occurring. A substantial number of marchers moved to the East Precinct. Estimated crowd size was 1500+. The group at EOC eventually moved to the area of Cal Anderson Park.

By about 1800 hrs., the crowd at the E Prct was estimated to be in excess of 2000. A fence line had been established at the precinct. The purpose of the line was to allow the continued police operations and to permit an area of relative security for police to operate. The crowd became increasingly confrontational. Shields, umbrellas, passing syringes filled with substances, reports of growing violent actions of the crowds from intel assets, people with pipes, bats and other potential improvised weapons. The crowd size had increased to approximately 8-10 thousand. Several PA announcements were made for people to keep back from the line. 217 and I tried to coordinate with representatives of the crowd to move people back from the line. This had little to no effect on the crowd.

At about 2100 hrs. the crowd started to deploy with substantial numbers of umbrellas in the front line. At least 4-5 lines deep, from corner to corner of 11th and pine. A line was maintained by officers facing west. It was believed that the incident was escalating resulting in the order to mask up in anticipation of defensive action by officers. Things appeared to calm a bit and in response our posture adjusted with officers doffing their masks. A line of SPD was backed up by National Guard. Over head views of the incident showed substantial numbers of demonstrators filling the entire intersection and adjacent streets. Police were in a purely defensive stance and no affirmative steps were taken by officers to address the crowd. Again, numerous attempts to de-escalate the event by the COC.

The crowd was energized and active for several hours. Fireworks were being lit at various locations and could hear reports from several blocks away. A member of the crowd went to the ground with some form of medical emergency, but officers could not gain access. The person had to be evacuated by organizers to one of their first aid providers somewhere in Cal Anderson park. A laser was being flashed into the eyes of officers. This can cause significant injury and was of great concern for those on the line. Estimated crowd size was close to 10000. The crowd continued to encroach on the officer line. The group was chanting, but also moving toward the line. Several warnings could be heard on live stream broadcast of the event. At some point bottles were thrown at the line. I believe an officer took a bottle and responded with deployment of OC. I could see numerous bottles, cans of pop and other objects being thrown from the crowd toward officers. The objects were thrown from a variety of sources intermixed throughout the crowd. The objects were thrown from behind the umbrellas that were used to obscure officers' ability to see into the crowd. The objects were heavy and could potentially cause significant injury. It looked as though water bottles had been frozen, based on how they impacted, and these were thrown in conjunction with cans of food and drink cans. I saw officers and National Guard get struck by objects. At this point the group had demonstrated acts of violence by one or more persons part of an assemblage of three or more persons, which act constitute a clear and present danger of damage or injury to the property of any other person or to the person of any other individual. It was for me at that time a riot.

I judged that the throwing of objects by the crowd as an assault in progress on officers. The items could cause significant injury and potentially death. Officers have a right to defend themselves provided the force used is objectively reasonable. This is consistent with law, policy and training. I noted that the officers could not retreat and there was no cover available. The crowd's willingness to advance combined with an intent to assault, made re-positioning without subjecting the officers to greater risk of injury, impossible. To stop the assaults, I ordered the use of OC and Blast Balls at directed threats. This is consistent with our policy and with the briefing I provided during roll call. This deployment was also consistent with UOF progression; when required, leading with OC, then Blast Balls and CS only when other tools are not working and when there is a life safety emergency. Once ordered, OC and Blast Balls munitions were used with limited effect, causing the crowd to withdraw slightly. Officers were still being

pummeled by improvised weapons from around the intersection. To complicate the tactical situation, an estimated group of 30+ people using umbrellas as shields, turtled up in the middle of the intersection at 11th and Pine. This group went to the ground and substantially impeded our ability to deploy to move the crowd. The group went to ground in what appeared to be a coordinated effort to stop our advance and limit our options. OC and Blast Balls were ineffective. We were continuing to take numerous objects being thrown from the crowd. If we stayed stationary, I felt officers would be increasing targeted, resulting in injury. Our tactics center on creating movement and distance to reduce the potential for conflict and is an essential element of our de-escalation model. If our position becomes fixed and we cannot move, then our tactical options are limited.

I evaluated the situation at that point as dire, with officer's safety in serious jeopardy. Other tools were not working. Tactical plans to move the crowd could not be used. We could not bypass the group, or we would have confrontational groups behind officers as they moved. If we closed with the group and tried to physically move the group, I felt we would subject officers and suspects to use of higher levels of force. Such higher levels of force would likely result in serious injury. The longer we delayed the more the situation deteriorated, exposing officer to more projectiles. I considered this to be a life safety emergency. Other options were not readily available and previously used tools were not working. No other resources were available to assist. The safety risk to all involved was significant. To keep people safe, I ordered the deployment of CS. This was done after repeated attempts to gain compliance, after warnings related to the options that may be employed and after giving dispersal orders. All those suspects that remained, assumed the risk of remaining, committing criminal acts and subject to arrest.

CS was deployed and the crowd began to move. The crowd still was actively assaulting officers. I observed one of the suspects pick up a fully active CS cannister and hurl it at National Guardsman, impacting his shield. The turtle group that had been hunkered down in the street with umbrellas, did begin to breakup with the deployment of CS and move toward the west. Once enough space was available officers began to move to keep the crowd from refocusing. Several thousand people remained. Officers pushed to the West on Pine, holding the intersection of 11th. Eventually we pushed north on 11th as well. Several dispersal orders were given by Car 21. Several officers were injured in this process. It was believed that a couple of officers had suffered broken bones; hand and foot. Several others were struck by large, heavy objects causing bruising and soreness. The area of the intersection was held so it could be photographed and processed.

Based on the facts available at the time of the incident the involved officers had the legal right to be at the location; an area open to the public.

The officers had legal authority, probable cause, to make arrests for assault, property damage, failure to disperse or other potential crimes.

In *Brinegar v. United States*, the U.S. Supreme Court defines probable cause as "where the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed."

The officers observed the violent acts and other criminal acts which were in progress.

Per SPD Policy 8.100, "When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force." De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. (See Section 8.050.) When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution. On 6/2 numerous attempts were made to de-escalate and gain compliance. A substantial number of PA announcements requesting compliance and eventually ordering dispersal gave the suspects ample opportunity to comply. Action was only taken when assaults began on officers. Once assaulted, de-escalation is no longer safe nor feasible.

At the distance the suspects were contacted and due to the environment, practical de-escalation options were limited. De-escalation requires opportunity to be successful. The opportunity to de-escalate increases significantly with distance and the ability to have standoff/cover. Distance creates time which allows for the assessment of alternative responses to suspect behavior. De-escalation is particularly lower key incidents. De-escalation tactics are much less feasible when encountering non-compliant, violent suspects creating situations of substantially greater risk. Additionally, for De-escalation to be feasible it requires a willingness to engage with officers to effect compliance. Refusal to engage as evidenced by ignoring commands, continuing to fight and resist detention, made it no longer feasible to further de-escalate. Although the risks were high and de-escalation was not safe nor feasible, officers continued to take substantial steps to de-escalate. They used tactics, teamwork, warnings and verbal commands to gain compliance and avoid the need to use force. The suspects chose to ignore legal orders by officers.

It is a law enforcement priority to make an arrest once PC exists. It is a further priority to act to protect people and property. If officers have the legal authority to detain an individual and the suspect resists, they may use objectively reasonable force to control the suspect. Officers at close distance from an armed suspect are behind the "decision-making curve". The suspect can act faster than the officers can react. The suspect, unlike an officer, is not slowed by the process of assessing the threat presented and determining what is the reasonable force response. This reactionary gap creates a need for officers to act when supported by appropriate legal authority. In this case officers were at a tactical disadvantage until the suspects was secured or the assaults stopped. As noted in law, policy and training, officers need not compromise their safety for the sake of de-escalation.

After developing PC, it is a legitimate policing priority to arrest a suspect who is creating a safety risk to officers and the community. The legality of a detention or seizure of a person is analyzed under the 4th Amendment. The 4th Amendment prohibits unreasonable searches and seizures. The operative term is unreasonable. Reasonable seizures are permitted, including the use of force, provided the governmental interest outweighs the rights of the person to individual liberty. Governmental interests can include the enforcement of criminal laws, protection of the public and preservation of evidence.

On 6/2 officers had probable cause for arrest, were acting to protect people and property, and the actions intent on stopping the suspects criminal conduct outweighs the suspect's right to liberty.

As with all legal seizures law enforcement may use objectively reasonable force to overcome resistance. Force is permissible by policy when it is "objectively reasonable, proportional ... (and) necessary to achieve a law-enforcement objective. The reasonableness of force is based on the totality of circumstances known by the officer at the time and weighs the actions of the officer against the rights of the suspect. The force

is judged from the perspective of a reasonable officer on the scene, rather than with the benefit 20/20 hindsight. Factors considered when evaluating force is the seriousness of the crime, the level of threat or resistance presented, whether the suspect was posing an immediate threat to officers or a danger to the community, the potential for injury to others, the risk or apparent attempt by the suspect to escape, the conduct of the suspect being confronted (as reasonably perceived by the officer at the time), the time available to an officer to make a decision, the availability of other resources, the training and experience of the officer, and the proximity or access of weapons to the suspect . SPD 8.200

As noted in law and policy an officers training and experience are relevant to the evaluation of objective reasonableness of force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. SPD Manual 8.200-1 It was reasonable, based on training and experience, to assume the resistance offered by the suspects during the riot, was dangerous to officers and the community. Closing with the suspects presented greater risk to officers. It was further reasonable to use tools to stop the immediate threat of harm, to reduce the potential for injury and to facilitate our law enforcement objective of preserving order and reducing the risk to those involved.

In this incident, the officers had a lawful purpose for seizure, the suspects refused to cooperate and resisted attempts at arrest. Numerous efforts were made to de-escalate. When force was used the suspects were actively engaged in acts of violence directed at officers. This reasonably demonstrated the suspects willingness to injure officers. Closing with the suspects would have forced the officers to go hands on and use force options more likely to cause injury. Of added concern for officers was the substantial and hostile crowd present who significantly outnumbered officers. It was reasonable to use less lethal tools to overcome assaultive resistance, stop violence/property damage in progress and detain persons, when feasible, in a way that creates minimal risk of injury to those involved. By deploying less lethal tools officers were able to eventually overcome resistance, maintain standoff and address any additional threats presented.

I believe based on my observations that the officers met the Graham standards defining objectively reasonable force. The officers were addressing an in-progress incident. Based on the totality of the circumstances available at the time the officers used objectively reasonable force to overcome active assaultive resistance. The severity of the crime was substantial, the suspects posed an immediate threat to officers, they were resisting arrest, the crowd mentality was impacting events, the officers had limited time to respond, they had limited resources to address the violence, the suspects were using improvised weapons and the potential for officer injury was extreme. The force used was proportional to the resistance encountered. The force was modulated once the suspects stopped resisting lawful authority. I believe the decisions I made and the force I ordered met the Graham standards requiring that force used by officers be objectively reasonable, necessary and proportional. To my knowledge the actions of officers and the decisions I made were consistent with law, policy and training. Law, policy and training defines what is objectively reasonable. I further believe that these standards are consistent with national best practices. Officers were addressing a violent riot in progress. Based on the totality of the circumstances available at the time objectively reasonable force was ordered to overcome aggravated assaultive resistance. The force ordered was proportional to the resistance encountered, often substantially less than what would have been legally permissible. The force decisions and orders were modulated once the suspects stopped resisting lawful authority.

6/6

On 6/6 I was the Deputy Ops for the day's events. I prepped the briefing and delivered the operational plan to officers. There were concerns based on the prior day's events that additional violent actions would occur. The focal point had become the East Precinct. Our response was complicated by the critique of our use of CS gas during a riotous event. As I have pointed out the critiques appear to focus on the lack of directional application of CS and the incorrect assertion that the marches were peaceful. Both points are erroneous and to some extent were propagated by those choosing to intentionally mischaracterize events. I cannot speak to motivation, only to the inconsistency of what happened vs. the assertions made by individuals. In response to these external issues the use of CS could be done only with the approval of the Chief or her designee. These factors impacted force decisions in the field.

The day started with a series of marches of substantial size that eventually ended up in the E Prct. There were several peaceful marches of significant numbers that occurred citywide. Traffic was significantly impacted as intersections were blocked and "sit ins" took place. The numbers of protestors moving to the East Precinct increased substantially. At one point I would have estimated close to 10000 people, filling the intersection of 11th/Pine in all directions. We had adopted a standoff approach, with minimal presence behind the line unless it was violated by the crowd. Continual PA announcements were done in an effort to gain compliance. The crowd tried to push or breach the line several times. The majority of times officers were able to re-establish the perimeter or maintain the line. The crowd kept encroaching on the line, moving fencing and closing with officers. Officers maintained a line in front of the protestors on Pine, just to the east of 11th.

I worked out a plan to intervene with the other commanders. We would move bikes north on 11th from Pike, then west on Pine. This would be done if it was required to move the crowd for officer safety reasons. As the crowd encroached, they also began to use tactics referred to in the flyer above. They erected umbrellas, formed shield walls, used lasers/lights to interfere with officers' vision and eventually had people intermixed in the crowd intent on throwing objects at officers. Numerous announcements using a large PA were made attempting to gain compliance. Officers attempted to reset the line, with the goal of re-establishing the fence barrier. The crowd began to throw items at officers. I observed them impacting the officer's shields and striking officers. The crowd was very large and committed to breaking the law and confrontation with police. We attempted to use traditional bike tactics/crowd control tactics to achieve separation and allow us to reform the barriers. Bikes moved north on 11th and were surrounded. I was waiting to seem them move so that I could deploy the foot officers to cover the intersection. I could not completely see 11th but heard broadcast that they were surrounded. I considered this to be dangerous in the extreme. When reviewing the incident, it was apparent that the bikes were completely blocked, surrounded and the crowd was actively assaulting officers. People were throwing items at officers, impeding their movement, fighting with officers, erecting improvised barriers and attacking the bike line as it moved north. This situation was untenable and exposed officers to significant potential for injury. If we would have had to get to the officers, it would have been impossible without the use of all munitions available. I heard bike officers asking for reinforcements.

I could hear the use of munitions, but the crowd was not substantially moving. In my assessment we were facing a very coordinated and committed group bent on confrontation with officers. As munitions were used, either OC or Blast Balls, there would be a minor withdrawal, followed by the crowd re-surfing back toward officers. At about that point I was not confident we could hold the line, protect the officers and re-establish a perimeter without the use of CS. I believed substantial property damage and the immediate threat of harm to officers and others was present. The imposed limitations on CS created an environment where more force was needed to stop the assaultive resistance than would have been required if CS had been employed. It was also not fully appreciated by some that at this point we were in a riot. Opportunities for people to leave had been provided along with extensive warnings. Dispersal orders had been given. At that point, in a riot, all persons still present are committing criminal acts and are subject to arrest. The limiting factor becomes the logistical restraints on having enough officers to make the arrests and the inability to safely close to affect the seizures.

The external limitations imposed on the use of CS are inconsistent with our training and philosophy related to Less Lethal tools. These devices are intended to work so that more impactful tactics are not required. These devices have a de-escalatory effect, permitting perpetrators an opportunity to evaluate the potential ramifications of further resistance, without having to resort to force that likely causes suspect injury. With the benefit of hindsight, given the situation, I would have pressed for use of CS. It was the safest response that would have been more effective to address the combative crowd.

Eventually bike officers were able to push north, reach the intersection at Pine, then turn west. A perimeter was established in the intersection of 11th and Pine. As the bikes pushed west, I observed a large crowd, assaulting officers to the north. A very large IED detonated to my right. My hearing was impacted, and I could not hear out of my right ear. All I could hear was ringing. I later learned that officers had been struck by some form of shrapnel, causing injury. Very large crowds remained. I could see the bikes moving west with very limited effect. The crowds were actively resisting, pushing on officers. I continued to see rocks, bottles, fireworks and other projectiles thrown at officers. We were receiving reports of people in the crowd prepping Molotov Cocktails. The bikes reached Broadway and we worked on a plan to withdraw to the intersection of 11th and Pine. Arrests were made as the officers moved the crowds. I could see hundreds of projectiles that had been thrown at officers on the ground along the path we moved. Several officer injuries were reported. The scene was temporally held as pictures were taken and ABS recovered evidence of explosives.

As bikes and officers withdrew to our original lines, I could see the crowd pushing officers and continuing to throw projectiles. I was unsure if we could hold the line. I felt we had to re-form and provide an opportunity for officers to get a break. I want to take a break to assess next steps and formulate a planned response. We reset the line then established a rotation. We were using shields to minimize the risk to officers. This put us in a defensive posture. The crowd could have kept their position and demonstrated as long as they wanted. The decision to foment confrontation was purely the decision of the crowd. The crowd continued to shine lasers in the eyes of officers creating significant potential of permanent injury.

Although no further crowd movements were required the demonstrators remained very confrontational. The perimeter was surrounded, and as officers exited, the group would impede their movement or assault them. These tactics made re-supply, removal of prisoners and rendering aid to those inside very difficult. The group also moved fencing, erected barricades and took actions to hinder our operations. Eventually we transitioned, and the officers were relieved by task force units taking over East Precinct security.

On 6/6 officers had probable cause for arrest, were acting to protect people and property, and the actions intent on stopping the suspects criminal conduct outweighs the suspect's right to liberty.

In this incident, the officers had a lawful purpose for seizure, the suspects refused to cooperate and resisted attempts at arrest. Numerous efforts were made to de-escalate. When force was used the suspects were actively engaged in an acts of violence directed at officers. This reasonably demonstrated the suspects willingness to injure officers. Closing with the suspects would have forced the officers to go hands on and use force options more likely to cause injury. Of added concern for officers was the substantial and hostile crowd present who significantly outnumbered officers. It was reasonable to use less lethal tools to overcome assaultive resistance, stop violence/property damage in progress and detain persons, when feasible, in a way that creates minimal risk of injury to those involved. By deploying less lethal tools officers were able to eventually overcome resistance, maintain standoff and address any additional threats presented.

I believe the deployments were consistent with policy. 14.090-10 states an officer is authorized to use OC and Blast Balls in crowd management situations, or really any context, when the incident addressed involves violent activity and the primary objective is to:

- Defend oneself
- Defend someone else
- Prevent significant destruction of property

It is clear to me that the above criteria were established during these events and the deployment of these munitions was consistent with policy. Further, I believe a life safety emergency existed. Per SPDM 14.090-9 b, an immediate life safety emergency is an unplanned, dynamic situation where immediate police action is necessary to protect the officers' and/or the public's safety. I think a large confrontational group assaulting officers meets the criteria of the manual section. Based on training, policy and law, I believe it was reasonable to use these tools to stop aggravated assaultive resistance.

I further believe, based on my observations that the officers met the Graham standards defining objectively reasonable force. The officers were addressing an in-progress incident. Based on the totality of the circumstances available at the time, the officers used objectively reasonable force to overcome, at a minimum, active assaultive resistance. The severity of the crime was substantial, the suspects posed an immediate threat to officers, they were resisting arrest, the crowd mentality was impacting events, the officers had limited time to respond, they had limited resources to address the violence, the suspects were using improvised weapons and the potential for officer injury was extreme. In fact officers were injured. The force used was proportional to the resistance encountered. The force was modulated once the suspects stopped resisting lawful authority.

I believe the decisions I made and the force I ordered met the Graham standards requiring that force used by officers be objectively reasonable, necessary and proportional. All my orders were intent on stopping violent assaults on officers and to protect officers from actions of the crowd intent on causing harm. To my knowledge the actions of officers and the decisions I made were consistent with law, policy and training. Law, policy and training defines what is objectively reasonable. I further believe that these standards are consistent with national best practices. Officers were addressing a violent riot in progress. Force was only used in most situations after providing warnings and opportunities for compliance. Based

on the totality of the circumstances available at the time objectively reasonable force was ordered to overcome aggravated assaultive resistance. The force ordered was proportional to the resistance encountered, often substantially less than what would have been legally permissible. The force decisions and orders were modulated once the suspects stopped resisting lawful authority.

6/7

This was another day of significant marches. At least one very large event occurred without incident. I was the Deputy Ops for the event, and I briefed officers on the plan for the day. It was again anticipated that the focus for demonstrators would be on the E Precinct. Our plan was to minimize our footprint in the hopes of reducing the potential for conflict. I would say that in spite of our best efforts the tone and tenor of the crowd at the East Precinct was confrontational. The group kept trying to encroach on the lines despite the warnings. Very large numbers came to the area. All access areas around the perimeter were blocked by demonstrators. Several efforts were made to breach the perimeter and obstruct officers from entering. SPD tried to negotiate with subjects but this was ineffective. As we tried to get resources inside the perimeter, the crowd charged the officers, throwing projectiles. I later learned that less lethal tools had been deployed. The entire perimeter was challenged by the crowd, encroaching and coming over/through fencing. I would say the crowd, as a whole appeared very confrontational from the start. Car 21 gave consistent, numerous warnings and requests for the suspects to comply.

At about 2020 hrs., I heard shots fired in the crowd to the southwest from the police barricade at 11th and Pine. I delayed deploying officers out of concern that this would incite the crowd. I could see a surge of crowd but could not determine what was happening. Suddenly a person moved toward our line. I learned he was armed. Later I learned he had driven a car into the crowd, was confronted and the driver fired at the group using a pistol. The person was chased to the police line where he was taken into custody. We managed to get bike officers to 11th and Pike to recover the vehicle and get aid to the victim. At around this time I also learned an officer was having some sort of medical emergency and we could not get SFD into check on their welfare.

Reports were received that launchers capable of launching projectiles to the police lines were being assembled in the park. These had been used in the past to throw heavy objects at the line, injuring officers. The crowd was disassembling the fence and pulling out sections. People in the crowd were using umbrellas as shields, using masks, body armor and other efforts to minimize the effect of our tools. Lasers were also shined at the officer's eyes. The group also inched forward, closing with the police lines. The crowd, in a coordinated way, moved fencing, cement barriers and other items to limit our tactical options. We were receiving information that the group was preparing for action. The crowd was signaling they intended to cause a confrontation and warning people to close windows in an effort to minimize the effects of munitions. The crowd kept inching forward until the group was within arm's reach of the officers. The officers were committing to holding a defensive line. We received additional reports that the crowd had altered fencing so it could be used as a weapon. I was worried the crowd would use the dismantled fencing as weapons to push against the line or ram into officers. We were getting reports of IED's, items placed on ground to be used as weapons, lasers still pointed at officers, protestors asking for more shields, other exit points blocked with dumpsters/debris, passing out ear protection in crowds in advance of action and finally bottles thrown at line from the crowd.

I was attempting to coordinate the release of 1st Watch Task Force and the entry of 3rd Watch into the security zone. The crowd was blocking the access at 13th and Pine. Some form of chemical was thrown

from the crowd at officers. Rocks, boulders, trash and other objects were used by the crowd to stop movement into the zone. Bike units were attempting to open the corridor when a confrontation occurred, and I believe an arrest was made. At about the same time the group at 11th and Pine began throwing objects at the line. I observed officers respond with OC spray directed at the perpetrators. A torrent of objects were thrown at officers. In response to the threat and officer assaults, units deployed OC/Blast Balls at directed threats.

Fireworks, bottles, large rocks were being hurtled at the police line. I felt if we continued to stay stationary officers would be subject to continued attack and their lives would be in danger. At that point we were in a riot. Dispersal orders had been given and ignored. I was particularly concerned for officer safety by the impact of projectiles descending toward the officers in a high arc. It was very hard to see these items and therefore very hard to avoid being struck. These were large, heavy objects that could have caused substantial injury or death. Additionally, fireworks and explosives were fired or thrown at officers. I could see glass bottles breaking on the ground. We experienced very large devices detonated by the crowd that injured officers. I was worried that additional weapons would be used if we remained in a fixed location. I felt we were making ourselves an easier target. I would note that we remained in place for a period of time, giving the crowd an opportunity to disengage but they chose to remain. I felt it was tactically unsound to remain in place and I ordered the line officers to advance from approximately midblock on Pine, west to 11th. I had hoped the movement would disrupt the attacks by the crowd. We advanced to the intersection and the crowd was very violent. I broadcast that we were being pelted by numerous projectiles. On various media sources objects are clearly observed being thrown at officers. Officers slowly advanced. Even when munitions were used to address threats of harm the crowd only marginally withdrew and then re-formed into a line with improvised shields facing officers. Numerous objects can see being thrown from the crowd at officers. As we reached the corner it appeared as though we were taking even more projectiles. I could see items coming from the northwest and southwest corners of 11th and Pine.

I could see items bouncing off officers shields, with continual barrage of items continuing to come at officers. I conveyed my concerns to Capt. Allen. We could not stop the attacks and we were continually being assaulted. I requested the use of CS and it was granted. I felt this was the only thing that would stop the attacks and provide enough room for officers to move to address the crowd. CS was deployed and it very quickly disrupted the attacks and permitted us to move. I ordered the officers/National Guard to move into the intersection, setting lines in all three directions. Barriers had been erected at 11th to the south and fires were eventually lit in the street. A dumpster was on fire. Once the intersection was under control, I ordered bike/foot officers to move west to disrupt the crowd. I could see substantial numbers of people throwing things at officers. The crowd was hiding behind shields and throwing items toward the line. As bikes moved more items were thrown. The ground was awash with rocks, bottles and other objects thrown from the crowd. Once the attacks stopped our use of force stopped. We withdrew and adjusted our lines. The crowd began, on their own, moving back toward officers. Several times we gave opportunities for the crowd to disengage, but they ignored and would re-advance at the line.

The crowd was advancing and pushing a dumpster. Officers had seen a person put bag into the dumpster. Officers were in fear that explosives had been put inside the metal dumpster. IED's had been used against officers. As the crowd pushed forward with the dumpster, reforming a line, officer used munitions to stop the threat, then advanced to secure the area. Eventually the line stabilized and we held as the scene was processed for evidence.

Based on the facts available at the time of the incident the involved officers had the legal right to be at the location; an area open to the public.

The officers had legal authority, probable cause, to make arrests for assault, property damage, failure to disperse or other potential crimes.

In *Brinegar v. United States*, the U.S. Supreme Court defines probable cause as "where the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed."

The officers observed the violent acts and other criminal acts which were in progress. The crowd failed to disperse and were actively resisting the lawful purpose of stopping attacks and protecting property.

Per SPD Policy 8.100, "When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force." De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. (See Section 8.050.) When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution. On 6/7 numerous attempts were made to de-escalate and gain compliance. Almost continuous PA announcements requesting compliance and eventually ordering dispersal gave the suspects ample opportunity to comply. Action was only taken when assaults began on officers. Once assaulted, de-escalation is no longer safe nor feasible.

It should be noted that ample opportunity was given for the crowd to exercise their right to free speech and assembly. No actions were taken to limit what was said or the process in which it was expressed. The demonstrations continued until the point they turned violent and then action was only taken when officers were directly assaulted. Under case law we have the right to limit the time, place and manner of free speech, provided it is content neutral and the limits are done for a legitimate governmental purpose. As noted in my statement, we were not concerned during the demonstration on 6/7 about what was being expressed. This was evidenced by the hours of opportunity provided to the group to express their beliefs and our restraint in acting until officer assaults occurred. Public safety concerns were the driver of our decisions on 6/7. Once public safety was in jeopardy action was taken that impacted the activities of the demonstrators. These actions took the form of content neutral enforcement to address criminal conduct. All the statutes enforced focused on criminal acts and not on the content of what was expressed. Finally, it is a legitimate government interest to keep people safe, to maintain order, to ensure an emergency facility can remain operational and to protect the property of the community. Therefore, I believe any action taken that impacted free speech and assembly was reasonable, limited, met a legitimate governmental interest and was content neutral.

Substantial de-escalation was attempted. It was continued until assaults began. At the distance the suspects were addressed and due to the environment, practical de-escalation options were now very limited. De-escalation requires opportunity to be successful. The opportunity to de-escalate increases significantly with distance and the ability to have standoff/cover. Distance creates time which allows for the assessment of alternative responses to suspect behavior. De-escalation is particularly lower key incidents. De-escalation tactics are much less feasible when encountering non-compliant, violent suspects

creating situations of substantially greater risk. Additionally, for De-escalation to be feasible it requires a willingness to engage with officers to effect compliance. Refusal to engage as evidenced by ignoring commands, continuing to fight and resist detention, made it no longer feasible to further de-escalate. Although the risks were high and de-escalation was not safe nor feasible, officers continued to take substantial steps to de-escalate. They used tactics, teamwork, warnings and verbal commands to gain compliance and avoid the need to use force. The suspects chose to ignore legal orders by officers.

It is a legitimate law enforcement priority to make an arrest once PC exists. It is a further priority to act to protect people and property. If officers have the legal authority to detain an individual and the suspect resists, they may use objectively reasonable force to control the suspect. Officers at close distance from an armed suspect are behind the "decision-making curve". The suspect can act faster than the officers can react. The suspect, unlike an officer, is not slowed by the process of assessing the threat presented and determining what is the reasonable force response. This reactionary gap creates a need for officers to act when supported by appropriate legal authority. In this case officers were at a tactical disadvantage until the suspects were secured or the assaults stopped. Many of the suspects were armed. Use of these weapons on officers could have resulted in significant injury or death of an officer. Further de-escalation was not practical. As noted in law, policy and training, officers need not compromise their safety for the sake of de-escalation.

After developing PC, it is a legitimate policing priority to arrest a suspect who is creating a safety risk to officers and the community. The legality of a detention or seizure of a person is analyzed under the 4th Amendment. The 4th Amendment prohibits unreasonable searches and seizures. The operative term is unreasonable. Reasonable seizures are permitted, including the use of force, provided the governmental interest outweighs the rights of the person to individual liberty. Governmental interests can include the enforcement of criminal laws, protection of the public, safeguarding property and preservation of evidence.

On 6/7 officers had probable cause for arrest, were acting to protect people and property, and the actions intent on stopping the suspects criminal conduct outweighs the suspect's right to liberty.

As with all legal seizures law enforcement may use objectively reasonable force to overcome resistance. Force is permissible by policy when it is "objectively reasonable, proportional ... (and) necessary to achieve a law-enforcement objective. The reasonableness of force is based on the totality of circumstances known by the officer at the time and weighs the actions of the officer against the rights of the suspect. The force is judged from the perspective of a reasonable officer on the scene, rather than with the benefit 20/20 hindsight. Factors considered when evaluating force is the seriousness of the crime, the level of threat or resistance presented, whether the suspect was posing an immediate threat to officers or a danger to the community, the potential for injury to others, the risk or apparent attempt by the suspect to escape, the conduct of the suspect being confronted (as reasonably perceived by the officer at the time), the time available to an officer to make a decision, the availability of other resources, the training and experience of the officer, and the proximity or access of weapons to the suspect . SPD 8.200

As noted in law and policy an officers training and experience are relevant to the evaluation of objective reasonableness of force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. SPD Manual 8.200-1 It was reasonable, based on training and experience, to assume the resistance offered by the suspects during the riot, was dangerous to officers and the

community. Closing with the suspects presented greater risk to officers. It was further reasonable to use tools to stop the immediate threat of harm, to reduce the potential for injury and to facilitate our law enforcement objective of preserving order and reducing the risk to those involved.

In this incident, the officers had a lawful purpose for seizure, the suspects refused to cooperate and resisted attempts at arrest. Numerous efforts were made to de-escalate. When force was used the suspects were actively engaged in acts of violence directed at officers. This reasonably demonstrated the suspects willingness to injure officers. Closing with the suspects would have forced the officers to go hands on and use force options more likely to cause injury. Of added concern for officers was the substantial and hostile crowd present who significantly outnumbered officers. It was reasonable to use less lethal tools to overcome assaultive resistance, stop violence/property damage in progress and detain persons, when feasible, in a way that creates minimal risk of injury to those involved. By deploying less lethal tools officers were able to eventually overcome resistance, maintain standoff and address any additional threats presented.

I believe less lethal deployments were consistent with policy. 14.090-10 states an officer is authorized to use OC and Blast Balls in crowd management situations, or really any context, when the incident addressed involves violent activity and the primary objective is to:

- Defend oneself
- Defend someone else
- Prevent significant destruction of property

It is clear to me that the above criteria were established during these events and the deployment of these munitions was consistent with policy. Further, I believe a life safety emergency existed. Per SPDM 14.090-9 b, an immediate life safety emergency is an unplanned, dynamic situation where immediate police action is necessary to protect the officers' and/or the public's safety. I think a large confrontational group assaulting officers meets the criteria of the manual section. Based on training, policy and law, I believe it was reasonable to use these tools to stop aggravated assaultive resistance.

I also believe we met the criteria for use of CS in a riotous situation. Our instruction prior to the demonstration was to use CS only with the permission of the Chief or her designee. We had voluntarily adopted the practice of using CS only in a life safety emergency. Additionally, the use of less lethal munitions that I observed during this event, were, I believe in compliance with the TRO issued on 6/12. As noted in the later TRO of 6/12:

- (1) The City of Seattle, including the Seattle Police Department and any other officers, departments, agencies, or organizations under the Seattle Police Department's control (collectively, "the City"), is hereby enjoined from employing chemical irritants or projectiles of any kind against persons peacefully engaging in protests or demonstrations. This injunction includes: (1) any chemical irritant such as and including CS Gas ("tear gas") and OC spray ("pepper spray") and (2) any projectile such as and including flash-bang grenades, "pepper balls," "blast balls," rubber bullets, and foam-tip projectiles. This Order does not preclude individual officers from taking necessary, reasonable, proportional, and targeted action to protect against a specific imminent threat of physical harm to themselves or identifiable others or to respond to specific acts of violence or destruction of property. Further, tear gas may be used only if (a) efforts to

subdue a threat by using alternative crowd measures, including pepper spray, as permitted by this paragraph, have been exhausted and ineffective and (b) SPD's Chief of Police has determined that use of tear gas is the only reasonable alternative available. The Chief of Police may only authorize limited and targeted use of tear gas and must direct it to those causing violent or potentially life-threatening activity. To the extent that chemical irritants or projectiles are used in accordance with this paragraph, they shall not be deployed indiscriminately into a crowd and to the extent reasonably possible, they should be targeted at the specific imminent threat of physical harm to themselves or identifiable others or to respond to specific acts of violence or destruction of property.

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All munition deployments I observed were at people involved in criminal conduct. Individual officers used munitions when necessary to target persons who were engaged in a specific imminent threat of physical harm to officers or others, or to stop specific acts of violence or property destruction. CS was only used when other devices were ineffective at stopping the attacks and when it was the only reasonable alternative to stop the violence. CS was deployed only at those in the front lines directly attacking officers. I note that ample opportunity had been given for the crowd to disperse. Those that remained were all committing criminal acts. They had failed to disperse and many of them were assaulting officers. They had been warned to leave and warned about the potential use of less lethal munitions. From my perspective those that remained were working in concert with others to commit criminal violence. They were using tactics to thwart our ability to address violence. The group took steps to coordinate their attacks. They used tactics identified in the diagram above to take direct action attacking officers. using shield/umbrella bearers in large numbers, deploying a light group using lasers against officers, barricade construction groups, medics, rock throwers, scouts with radios, group commands and coordinated actions all show the high degree of sophistication of the demonstrators. This calculated response also shows the high numbers of people directly engaged in criminal conduct directed at officers. These were not random people participating in an event. By 6/7 these demonstrations had been a daily event for almost a week and the community was aware of what could happen if the police were attacked. No one present could say they were surprised by the use of less lethal munitions during this demonstration after observing the actions of the crowd and listening to the warnings given. I believe that our use of CS during this event was done only for life safety reasons, was reasonable given the context, was proportional and was necessary to protect officers/community. I continue to believe that this tool is one of the least likely to injure people, is mitigated very quickly by leaving the area and is very effective at halting violence. I believe that when CS was used it was only applied to those engaged in criminal conduct and done so as a last option to protect officers.

I believe, based on my observations, that the force used by officers met the Graham standards defining objectively reasonable force. The officers were addressing an in-progress incident. Based on the totality of the circumstances available at the time, the officers used objectively reasonable force to overcome, at a minimum, active assaultive resistance. The severity of the crime was substantial, the suspects posed an immediate threat to officers, they were resisting arrest, the crowd mentality was impacting events, the officers had limited time to respond, they had limited resources to address the violence, the suspects were using improvised weapons to directly attack officers and the potential for officer injury was extreme. In fact, officers were injured. The force used was proportional to the resistance encountered. In fact, the force used was substantially less than what would have been legally permissible in response to suspect

resistance. Based on the level of resistance by suspects, officer could have countered with impact weapons or even potentially deadly force to stop aggravated, aggressive and assaultive resistance. Officer chose to use much less force than would have been permissible within law, policy and training. The force used was modulated once the suspects stopped resisting lawful authority.

I believe the decisions I made and the force I ordered met the Graham standards requiring that force used by officers be objectively reasonable, necessary and proportional. All my orders were intent on stopping violent assaults on officers and to protect officers from actions of the crowd intent on causing harm. To my knowledge the actions of officers and the decisions I made were consistent with law, policy and training. Law, policy and training defines what is objectively reasonable. I further believe that these standards for addressing riotous behavior are consistent with national best practices. Officers were addressing a violent riot in progress. Force was only used in most situations after providing warnings and opportunities for compliance. Based on the totality of the circumstances available at the time objectively reasonable force was ordered to overcome aggravated assaultive resistance. The force ordered was proportional to the resistance encountered, often substantially less than what would have been legally permissible. The force decisions and orders were modulated once the suspects stopped resisting lawful authority. All actions I observed were coordinated and consistent with training. From what I observed the Department responded to these events in a measured way, attempting to address significant violence and property destruction, while maintaining its support of free speech and assembly.