

MONITORING OF APRIL 2009 IMF/WORLD BANK PROTEST



REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD

TO

**MAYOR ADRIAN M. FENTY,
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CATHY L. LANIER**

September 24, 2009

POLICE COMPLAINTS BOARD

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I. INTRODUCTION AND OVERVIEW

The Police Complaints Board (PCB), the governing body of the Office of Police Complaints (OPC), is authorized by statute to monitor and evaluate the Metropolitan Police Department's (MPD) handling of First Amendment assemblies held in or on public space controlled by the District of Columbia,¹ and to make recommendations to the Mayor, the Council of the District of Columbia, and MPD's Chief of Police that, if implemented, may lower the incidence of police misconduct.² It is pursuant to this statutory authority that PCB submits this report and recommendations.³

On Saturday, April 25, 2009, PCB deployed 12 OPC staff members to monitor MPD officers' interactions with anti-globalization demonstrators who staged a First Amendment protest near the downtown Washington, D.C., headquarters of the International Monetary Fund (IMF) and the World Bank Group (World Bank).⁴ The goal of the protest was to disrupt the 2009 spring meetings of the IMF and World Bank, which were held in Washington that day. OPC staff sought to monitor MPD officers' compliance with the First Amendment Rights and Police Standards Act of 2004 (First Amendment Assemblies Act), a District of Columbia law that establishes specific standards of conduct for MPD officers in handling First Amendment demonstrations and that aims to balance public safety interests with the right of free expression.⁵

As discussed more fully in the report, MPD substantially complied with the Act during the Saturday morning demonstration and is to be commended for successfully facilitating numerous related demonstrations over a three-day period. MPD's overall performance demonstrates the department's continued commitment to abiding by the goals of the Act. As in the recent past, however, there was a marked difference between MPD's interactions with

¹ PCB "may, where appropriate, monitor and evaluate MPD's handling of, and response to, First Amendment assemblies . . . held on District streets, sidewalks, or other public ways, or in District parks." D.C. Official Code § 5-1104(d-1).

² PCB "shall, where appropriate, make recommendations to [The Mayor, the Council, and the Chief of Police] concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers." D.C. Official Code § 5-1104(d).

³ The recommendations are supported by four of the five members of PCB: Kurt Vorndran, Karl M. Fraser, Victor I. Prince, and Margaret A. Moore. The fifth member of the Board, MPD Assistant Chief Patrick A. Burke, concurs in MPD's opposition to the first recommendation, which urges the District to seek federal law enforcement agencies' voluntary compliance with the First Amendment Assemblies Act when assisting MPD with protests on District-controlled public space.

⁴ PCB is grateful to the following OPC staff, which supervised, coordinated, or participated in the agency's April 25, 2009, monitoring effort and which assisted in preparing this report and recommendations: Philip K. Eure, executive director; Ivelisse Cruz, deputy director; Nicole Porter, Special Assistant; Kesha Taylor, Chief Investigator; attorney Angela Kiper; Assistant Chief Investigators Mona Andrews and Natasha Bryan; senior investigator Anthony Lawrence; investigators John Brunza, Norma Bryan, Stephanie Clifford, Julio Romney, and Andrew Schwartz; and summer 2009 law clerk Nathaniel Adams of Columbia University School of Law. PCB also appreciates the cooperation of MPD Chief Cathy Lanier, Captain Jeffrey Herold, and MPD's Special Operations Division for their assistance to OPC in planning and executing its monitoring effort.

⁵ D.C. Official Code § 5-331.01 – 5-337.01.

protesters and that of federal law enforcement officers who assisted MPD, warranting consideration of ways to reduce the disparity to ensure full implementation of the First Amendment Assemblies Act.

OPC monitors arrived at the IMF/World Bank complex shortly after 9:00 a.m. and assumed posts near where it was believed demonstrators would try to prevent delegates from entering the meetings. In a turn of events, the demonstrators were precluded from staging a blockade as a result of a brief but noteworthy clash between police and demonstrators that occurred a short distance away from the IMF/World Bank buildings. Because OPC's monitors were stationed at the IMF/World Bank awaiting the expected blockade, they did not witness firsthand the conflict that occurred. Nevertheless, OPC staff interviewed eyewitnesses, reviewed media accounts of the incident, and reviewed video footage of the event in an attempt to understand what happened.

The information reviewed by OPC indicates that on April 25, 2009, anti-globalization protesters participated in street demonstrations in the District between 8:00 a.m. and 9:30 a.m., even though they had not obtained a protest permit. Between 9:15 a.m. and 9:30 a.m., protesters marched around the Foggy Bottom neighborhood in the vicinity of George Washington University and the IMF/World Bank complex. At approximately 9:30 a.m., the group traveled east on I street, N.W., headed toward Pennsylvania Avenue. Upon reaching the intersection with Pennsylvania Avenue, the group briefly veered southeast in the direction of the IMF/World Bank then abruptly changed course and marched in the opposite direction, as if to go northwest on Pennsylvania Avenue.

When the demonstrators arrived at the intersection of Pennsylvania Avenue, 20th Street, and I Street, N.W., they encountered a group of MPD officers who allowed them to protest without a permit but who tried to determine the demonstrators' destination so a police escort could accompany them to help avoid traffic problems. This was an issue because Pennsylvania Avenue remained open to traffic. The protesters ignored the offer of assistance and instead attempted to march past the officers and a police car that partially blocked the street, in the process completely surrounding the officers.

The officers responded to being surrounded by ordering the protesters to move back. Some officers pushed demonstrators backward using batons while simultaneously ordering them to move back. Some protesters responded by pounding on and damaging a police cruiser and shouting profanity at the officers. This led MPD to declare the assembly unlawful and to order the protesters out of the street and onto the sidewalk. There was a brief interlude during which the protesters were no longer surrounding the officers but remained standing in the street, as if waiting. It was at this point that an order to disperse was broadcast.

In response to the dispersal order, a police line formed and officers began pushing the demonstrators backward onto a narrow sidewalk alongside James Monroe Park. The demonstrators were unable to fit on the sidewalk, however, due to the size of the group and the presence of a fence that prevented them from backing up. The inability of the entire group to get on the sidewalk was met with forceful pushing by MPD officers using batons. The chaos escalated when an MPD officer, who was helping to guide protesters onto the sidewalk, fell due

to the crush of people being pushed together by the police line. Protesters near the officer who fell were then subjected to particularly aggressive pushing by the police line, causing many to fall down. A Federal Protective Service officer, who was assisting MPD, then sprayed the group with “pepper spray,” which briefly incapacitated many demonstrators and brought the morning’s activity to an end.

It appears to PCB that although the officers had a legitimate basis to declare the demonstration an unlawful assembly, the protesters may not have been afforded a sufficient opportunity to voluntarily comply with orders to move out of the street before they were subjected to a police line. It further appears that demonstrators were not provided sufficient time and space to disperse voluntarily, causing many protesters to sustain minor injuries from being pushed, falling, and being doused with a federal officer’s “pepper spray.”

PCB is also concerned about federal law enforcement officers who assist MPD with First Amendment assemblies. Federal officers routinely help MPD to handle demonstrations, including those that take place solely on District-controlled public space. However, federal officers lack knowledge of the requirements of the First Amendment Assemblies Act and are not obligated to comply with the Act, as it is a District law that applies only to MPD officers. The federal officers therefore handle demonstrations differently from MPD and at times take actions against protesters that contravene the First Amendment Assemblies Act. PCB addressed this issue in its 2007 protest monitoring report, but given the impact of a federal officer’s use of pepper spray during the April 25, 2009, IMF/World Bank protest, PCB believes the issue warrants renewed attention and a more effective response.

It is in the District’s interest for several reasons, not least of which is full realization of the purposes for passing the First Amendment Assemblies Act, to have consistency in the handling of demonstrations that take place in Washington on District property. PCB therefore recommends that the District, through the combined efforts of the Mayor, D.C. Council, and MPD Chief, seek to obtain voluntary compliance with the First Amendment Assemblies Act by those federal law enforcement agencies that routinely assist MPD with First Amendment demonstrations on District-controlled public space. The District may wish to enter voluntary memoranda of agreements with these agencies, pursuant to which MPD would provide training and guidance on the operation and application of the First Amendment Assemblies Act in exchange for a voluntary commitment from the cooperating agencies to comply with the terms of the Act when assisting MPD with First Amendment demonstrations.

Recognizing that MPD provides ongoing in-service training on the First Amendment Assemblies Act, is developing a mandatory online training course on the Act, and holds debriefing sessions during which it evaluates its compliance with the Act, PCB nevertheless recommends that MPD emphasize in its training several of the major provisions at issue in the April 25, 2009 protest, particularly those involving giving demonstrators an opportunity to comply voluntarily with time, place, and manner restrictions; giving demonstrators reasonable and adequate time to disperse; giving demonstrators a clear and safe route for dispersal; limiting use of police lines; and prohibiting use of chemical irritants except in rare circumstances.

II. FIRST AMENDMENT ASSEMBLIES ACT OF 2004

The First Amendment Rights and Police Standards Act of 2004—known by its short title The First Amendment Assemblies Act (the Act)—took effect in the District on April 13, 2005. The Act established and declared the District’s official policy on First Amendment protests. In the District, persons and groups have a right to engage in peaceful First Amendment demonstrations in or on public space controlled by the District—particularly places near the object of the demonstrators’ protest so they can be seen and heard—subject solely to reasonable time, place, and manner restrictions designed to protect public safety and to accommodate competing rights of non-demonstrators.⁶ The Act requires MPD to recognize and implement this official policy by adhering to specific standards of conduct in interacting with persons and organizations engaged in exercising First Amendment rights.⁷ These standards of conduct prohibit MPD from employing crowd control tactics during protests that deprive demonstrators of the right to assemble peaceably and express their views. The law also granted PCB the authority to monitor MPD’s handling of protests and demonstrations.

The Act has four titles. Title I contains the official statement of the District’s policy on First Amendment demonstrations and contains the provisions that govern conduct of MPD officers during protests.⁸ Title II limits MPD investigations of First Amendment activities to circumstances where there is reasonable suspicion of criminal activity.⁹ Title III requires MPD to clearly and accurately inform arrestees of the consequences of “post-and-forfeit” summary arrest procedures.¹⁰ Title IV explicitly prohibits MPD officers from covering up any identifying information on their uniforms or hindering members of the public from reading the information.¹¹

On Saturday, April 25, 2009, OPC staff members were prepared to monitor MPD’s compliance with provisions of Title I of the Act. Specifically, OPC monitors planned to observe whether MPD officers:

- (1) permitted people to engage in First Amendment demonstrations even if they had not given notice to the District or obtained prior approval;¹²
- (2) sought demonstrators’ voluntary compliance with reasonable time, place, and manner restrictions before arresting demonstrators;¹³

⁶ D.C. Official Code § 5-331.01.

⁷ D.C. Official Code §§ 5-331.05 through 5-331.17.

⁸ D.C. Official Code §§ 5-331.01 through 5-331.17.

⁹ D.C. Official Code §§ 5-333.01 through 5-333.13.

¹⁰ D.C. Official Code §§ 5-335.01.

¹¹ D.C. Official Code §§ 5-337.01.

¹² D.C. Official Code §§5-331.05 and 5-331.07.

(3) limited arrests and citations to specific, non-compliant demonstrators for whom there was probable cause;¹⁴

(4) refrained from dispersing demonstrators unless there was widespread unlawful conduct or widespread failure to comply with reasonable time, place, and manner restrictions;¹⁵

(5) provided multiple audible warnings, a clear dispersal route, and sufficient time to disperse, when dispersal was deemed necessary;¹⁶

(6) refrained from using police lines to surround demonstrators unless there was widespread unlawful conduct or a need to protect the safety of the demonstrators;¹⁷

(7) visibly displayed their names and badge numbers on their uniforms;¹⁸

(8) refrained from using riot gear unless there was a danger of violence;¹⁹

(9) refrained from using chemical irritants to disperse demonstrators unless demonstrators were endangering public safety;²⁰ and

(10) granted the media full access to areas where demonstrations took place.²¹

OPC also was prepared to monitor compliance with provisions of the Act governing the restraint and processing of demonstrators who were arrested; however, since MPD did not conduct mass arrests on April 25, 2009, OPC did not monitor MPD's adherence to those provisions.

¹³ D.C. Official Code§5-331.07.

¹⁴ D.C. Official Code§5-331.07.

¹⁵ D.C. Official Code§5-331.07.

¹⁶ D.C. Official Code§5-331.07.

¹⁷ D.C. Official Code§5-331.08.

¹⁸ D.C. Official Code§5-331.09.

¹⁹ D.C. Official Code§5-331.16.

²⁰ D.C. Official Code§5-331.16.

²¹ D.C. Official Code§5-331.14.

III. PROTEST EVENTS

Numerous demonstrations intended as protests against the global economic and financial systems, purportedly embodied in IMF/World Bank policies, took place in the District from Friday, April 24, 2009, through Sunday, April 26, 2009.²² Most of the events were promoted by two locally based activist groups: Global Justice Action (GJA) and the Self Described Anarchist Collective (SDAC). In messages posted on the internet, organizers encouraged participants not only to attend the planned events, but also to take “direct action” by, among other things, joining unpermitted, informal attempts to “disrupt the start of the IMF/World Bank meetings” on the morning of Saturday, April 25.²³

On Saturday, April 25, 2009, an estimated 100 to 200 people participated in anti-globalization protests near the IMF/World Bank’s Washington, D.C. headquarters.²⁴ The April 25 protests took the form of early-morning human blockades outside the hotels of delegates to the IMF/World Bank meetings; an attention-raising “roving dance party;” and, most notably, unpermitted rallies in the District’s Foggy Bottom neighborhood that eventually coalesced into a single “snake march” through the streets near the IMF/World Bank complex.²⁵ Between 9:15 a.m. and 9:30 a.m., demonstrators marched and chanted slogans.²⁶ Demonstrators allegedly planned to form human blockades around the IMF/World Bank buildings to prevent delegates from entering the meetings. However, the demonstration ended just before 10:00 a.m. in a brief but vigorous clash between police and protesters, described more fully later in the report.²⁷

²² Notable protest events not monitored by OPC included a “fun run,” rally, and press conference held on Friday, April 24, 2009; an economic forum held on Saturday, April 25, 2009, at St. Stephen’s and the Incarnation Episcopal Church; and a final march and rally held Sunday, April 26, 2009. See Megan Greenwell, *IMF Protests Start Small With 75-Person Rally*, WASHINGTON POST, April 24, 2009 available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/24/AR2009042402878.html>; see also <http://globaljusticeaction.org/wg/forum> (last visited Sept. 17, 2009); and see *Activists Protest Against IMF, World Bank*, Associated Press, April 26, 2009, available at <http://abcnews.go.com/US/wireStory?id=7435261>.

²³ See <http://globaljusticeaction.org/schedule> (last visited Sept. 17, 2009); see also <http://selfdescribed.org/?p=222> (last visited Sept. 17, 2009).

²⁴ Different sources offered different estimates for the size of the protest. See Nafeesa Syeed, *Police, Protesters Clash near IMF Meetings in DC*, ASSOCIATED PRESS, April 25, 2009, available at <http://abcnews.go.com/US/wireStory?id=7428234> (estimating more than 100 protesters); Janie Lorber, *The Police and Protesters Clash at World Bank Headquarters*, N.Y. TIMES (The Caucus blog), April 25, 2009, available at <http://thecaucus.blogs.nytimes.com/2009/04/25/the-police-and-protesters-clash-at-world-bank-headquarters/> (estimating 150 protesters); Michael Alison Chandler, Aaron C. Davis & Hamil R. Harris, *A Day of Vandalism, Violence*, WASHINGTON POST, April 26, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/25/AR2009042501336.html> (estimating 200 protesters).

²⁵ See Michael Chandler et al., *A Day of Vandalism, Violence*, *supra* note 22.

²⁶ *Id.*

²⁷ *Id.*

IV. OPC'S MONITORING EFFORT

In keeping with past protest-monitoring practice, OPC only deployed observers on the day of the IMF/World Bank meetings, Saturday, April 25, 2009. OPC's purpose in monitoring the April 25 protest was to observe MPD's interactions with demonstrators and to determine the extent to which MPD complied with the First Amendment Assemblies Act. As in the past, OPC staff communicated extensively with MPD officials in the weeks and days before the protest to obtain information regarding the times and locations of planned or anticipated demonstrations.

MPD and OPC did not know in advance precisely when or where protesters would be most likely to encounter police. Nevertheless, OPC monitors were deployed in the area immediately surrounding the IMF /World Bank buildings just after 9:00 a.m. in the belief that a significant level of protest activity might take place there as demonstrators tried to block delegates from entering the meetings.

Twelve OPC staff members were divided into six foot-patrol teams, four of which were assigned to cover specific segments of the area bounded by Pennsylvania Avenue N.W. to the north, 18th Street, N.W. to the east, G Street, N.W. to the south, and 20th Street, N.W. to the west. Two OPC teams were allowed to move freely throughout the monitoring area so they could easily discover and quickly move toward any conflicts that developed. All OPC teams were authorized to access the streets and sidewalks blocked off by police barriers, which were closed to the general public. However, MPD officers initially denied two OPC teams access to barricaded areas. OPC monitors ultimately were allowed full access to non-public areas after MPD supervisory officials intervened.

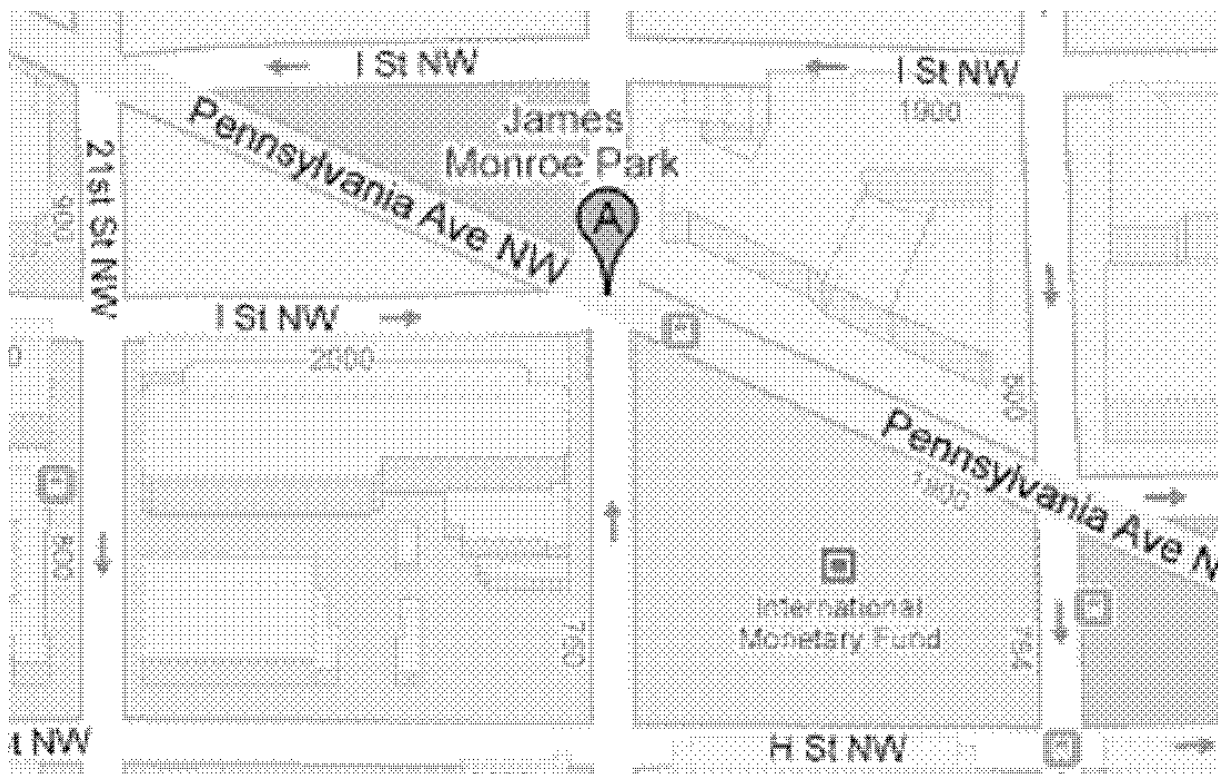
Unexpectedly, the major event of the day, a skirmish between police and protesters that led to the effective dispersal of the rally, occurred at approximately 9:40 a.m. in a location just north and west of the IMF/World Bank complex. At the time, OPC's monitors were still stationed at the IMF/World Bank buildings awaiting the start of the blockade. Consequently, OPC monitors witnessed very little contact between MPD officers and protesters. In the immediate aftermath of the clash, OPC monitors noticed demonstrators dispersing, including several who apparently had been affected by a federal officer's blast of pepper spray and who, accordingly, were rinsing their skin and eyes with water. One OPC monitor witnessed protesters warning mounted police officers not to let their horses drink from the fountain in James Monroe Park because the water had just been used to rinse off "pepper spray." OPC monitors spoke to a few eyewitnesses at the scene and obtained contact information for later use in attempting to gain a more complete picture of what occurred.

V. INCIDENT AT INTERSECTION OF PENNSYLVANIA AVENUE, 20TH STREET, AND I STREET, N.W.

Below is a description of the incident that occurred between police and demonstrators who were marching and chanting near the IMF/World Bank complex at approximately 9:30 a.m. on the morning of Saturday, April 25, 2009. As indicated previously, OPC's monitors did not observe the incident firsthand. Accordingly, the account herein is based on interviews with

police and citizen eyewitnesses, media reports of the incident, and publicly available and unpublished video footage of the conflict.²⁸

Shortly after 9:30 a.m., the unpermitted “snake march” that had resulted from the convergence of numerous smaller, impromptu demonstrations headed north on 21st Street N.W. The mass of protesters turned right onto I Street, heading east toward the IMF/World Bank buildings. At the intersection of I Street, 20th Street, and Pennsylvania Avenue (point A on the map below), the mass of protesters abruptly changed course. Rather than continue southeast on Pennsylvania Avenue, they made a sharp left turn as if to march northwest on Pennsylvania Avenue toward Washington Circle.



As the group turned, it encountered MPD officers stationed on Pennsylvania Avenue. Some officers were on foot while others were on bicycles. There were several police cruisers

²⁸ This description of events was compiled from eyewitness interviews, as well as the following documentary sources: DVD: World Bank Protest Video (Jeffrey Light 2009) (on file with OPC); YouTube video: April 25 2009, IMF World Bank Police Brutality (sarcasmic fellow 2009), available at <http://www.youtube.com/watch?v=PsuDo6a7jYA>; YouTube video: April 25 2009, World Bank/ IMF Protesters Occupy Streets and Are Attacked by Cops (monkeywithsoda 2009), available at <http://www.youtube.com/watch?v=YALj9ypXt5U>; YouTube video: April 25, 2009, Cops Assault and Pepper Spray IMF Protesters in DC (lukefromdc 2009), available at <http://www.youtube.com/watch?v=7A82eafNLRU;%20YouTube%20video:%20IMF%20/%20World%20Bank%20Beat%20Down>; YouTube video: April 25, 2009, IMF / World Bank Beat Down (FluxRostrum 2009), available at <http://www.youtube.com/watch?v=mVXcesSQZQQ>; YouTube video: April 25, 2009, Protest Against IMF (nocommenttv 2009), available at <http://www.youtube.com/watch?v=oT8UOffPqdQ>.

parked on the side of the street, and one of the police cruisers was parked perpendicular to the direction of traffic, effectively barricading part of the street. To some demonstrators, it appeared as if the police cruiser that blocked the street was there to prevent them from marching beyond that point. According to MPD, however, the officers at this intersection had been “shadowing,” the demonstrators from behind—escorting the protesters from a distance so as not to interfere with their chanting and marching while protecting them from traffic on streets, such as Pennsylvania Avenue, that had not been closed. At the same time, the officers were protecting the public from any traffic or other problems that might arise as a result of the demonstration.²⁹ Accordingly, the cruiser parked perpendicular to the traffic flow was there to protect protesters from oncoming Pennsylvania Avenue traffic as they made their way back toward the IMF/World Bank complex.

An MPD official attempted to speak with a member of the group who appeared to be a leader in an effort to ascertain where they wished to go.³⁰ MPD tried to determine where the group was headed so police officers could escort them to the desired location in a way that would avoid traffic safety issues.³¹ The demonstrators rebuffed the offer of assistance by refusing to respond to the MPD official’s questions.³²

An impasse occurred at this juncture. It appeared to some protesters that the police intended to prevent them from marching beyond the police cruiser in the street. Demonstrators allege that as they tried to march past the cruiser, several police officers drew their batons and began to push the protesters back toward the intersection. One witness to the incident speculated that the police may have feared the protesters would try to tip over the cruiser that was blocking their path.

MPD maintains that the demonstrators could have continued marching on Pennsylvania Avenue in any direction they wished and could have marched around the police cruiser in the street. Instead, the marchers allegedly converged upon and surrounded the officers and the cruiser in a manner that made the officers feel besieged.³³

MPD asserts that officers responded to being “swarmed” by the protesters, first by verbally ordering demonstrators to back up and then by pushing them back when they failed voluntarily to move.³⁴ Demonstrators counter that the officers did not wait for them to comply but rather began pushing them forcefully at the same time they ordered the group to move back.

²⁹ Telephone Interview with Captain Jeffrey Herold, Special Operations Division, Metropolitan Police Department (August 20, 2009).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

As this was happening, some protesters pounded on the police car, resulting in damage to the vehicle.³⁵ Other protesters locked arms and began shouting profanity at the officers.

The officers succeeded in pushing the protesters away from the cruiser and toward the curb, eliminating the situation in which the officers were surrounded. By then, however, the MPD official on the scene had determined that the protesters' actions of converging on the officers, pounding on the police car, and locking arms while shouting profanity at the officers created a public safety problem.³⁶ He therefore declared the demonstration an unlawful assembly.

There was a very brief lull during which the protesters, apparently not yet aware that the protest had been declared unlawful, stood in the street as if waiting. At that juncture, a dispersal order was given. The order was announced over a police car loud speaker and a bullhorn. The protesters were ordered to move out of the street and onto the sidewalk.³⁷

A police line formed and officers began pushing the protesters backward, at an angle, toward the sidewalk adjacent to (North) James Monroe Park.³⁸ As the protesters were being pushed backward, a single MPD officer, apparently attempting to guide protestors toward the sidewalk, edged between the protesters and photographers who were taking pictures in close proximity to the group. Amid the crush of people, the officer tripped and fell to the ground. Nearby officers saw him go down and immediately rushed to his aid, in the process vigorously shoving aside protesters who were near the tripped officer. Several protesters at the front of the group were pushed with great force by officers using batons, causing them to fall backward into other demonstrators who were having trouble finding space on the sidewalk. This created a domino effect that caused a number of people to fall down, many screaming. MPD concedes that officers became more aggressive toward the protesters at the time the MPD officer fell because it was not clear the officer had tripped, and it appeared as if protestors may have deliberately knocked the officer down. MPD confirmed that a protester who allegedly hit or kicked the officer while he was on the ground was arrested for assault on a police officer.³⁹

The chaos unleashed by the MPD officers' fall was compounded by the fact that as protesters were pushed onto the sidewalk, they bumped into a short fence that surrounds James Monroe Park and could not move back any farther. The presence of the fence prevented many

³⁵ See Michael Chandler et al., *A Day of Vandalism, Violence*, *supra* note 22; see also Interview with Captain Jeffrey Herold, *supra* note 27 (confirming that the police cruiser in question was damaged by protesters during the incident).

³⁶ Interview with Captain Jeffrey Herold, *supra* note 27.

³⁷ *Id.*

³⁸ Although many media reports described the park as Edward R. Murrow Park, in fact it was not. The park at issue in this incident was the northern section of James Monroe Park, which is bounded by Pennsylvania Avenue to the west, I Street to the north, and 20th Street to the east. Like Morrow Park, James Monroe Park consists of two triangular segments separated by Pennsylvania Avenue.

³⁹ Interview with Captain Jeffrey Herold, *supra* note 27.

demonstrators who were at the front of the group from being able to fit onto the sidewalk. MPD acknowledges that protesters were unable to fit on the sidewalk as a result of the fence but contends that as soon it became apparent the fence impeded protesters from complying with officers' orders, the police line was ordered to back up, and protesters were allowed to move around the fence and into the park.

The confusion and disorder that accompanied the MPD officer's fall and the resulting cascade of falling protesters apparently overwhelmed a Federal Protective Service officer, who was one of four federal law enforcement officers assisting MPD officers at the scene of the incident.⁴⁰ With many protesters still lying on the ground, he fired four bursts of orange-colored pepper spray into the crowd from a large canister. The substance immediately affected those who were hit, causing an extreme burning sensation in their eyes and mouths and on their skin and setting off a widespread clamor for medical attention. In the immediate aftermath of the spraying, one video of the incident shows an MPD officer discharging pepper spray from a small aerosol can at protesters lying on the ground.⁴¹

Protesters who were sprayed ran into Monroe Park to wash off their skin and clothing in the fountain, and within minutes all of the marchers were off the street. Many who were not sprayed or otherwise injured gathered at the edges of the park, some occasionally yelling at the MPD officers who stood at 20th Street and Pennsylvania Avenue after the incident. According to media reports, one protester was taken to a nearby hospital with a broken leg,⁴² and MPD confirmed that two protesters were arrested during the incident: one for assaulting a police officer, and one for damaging police property.⁴³ The spraying incident effectively ended the protest for the rest of the morning. MPD maintains that the protesters could have resumed their protest at that point if they had wished to do so.

VI. ASSESSMENT OF MPD'S COMPLIANCE WITH THE FIRST AMENDMENT ASSEMBLIES ACT

MPD complied with the First Amendment Assemblies Act's preference for allowing First Amendment demonstrations even when protesters fail to obtain permission. Consistent with the Act, MPD's policy is to refrain from arresting demonstrators solely for failing to have a protest permit and to refrain from dispersing demonstrations solely because participants lack a permit. On Saturday, April 25, 2009, MPD allowed anti-globalization protesters to demonstrate in District streets at various locations in northwest Washington, including the Foggy Bottom neighborhood where the IMF/World Bank complex is located, despite that they did not give notice or seek approval from the District. Moreover, MPD's dispersal of the demonstration at 9:50 a.m. was not based on the protesters' lack of a permit. According to MPD, the protesters had been allowed to demonstrate in the streets earlier that morning and would have been allowed to continue if they had not surrounded the officers and engaged in what was perceived as hostile

⁴⁰ *Id.*

⁴¹ IMF / World Bank Beat Down, *supra* note 26, at 6:59.

⁴² Chandler et al., *A Day of Vandalism, Violence*, *supra* note 22.

⁴³ Interview with Captain Herold, *supra* note 27.

behavior while at the same time refusing assistance to continue their demonstration in a manner that allowed for traffic safety.

MPD partially complied with the Act's requirement to give demonstrators an opportunity to comply voluntarily with reasonable time, place, and manner restrictions in that no protesters were arrested for failing to back up toward the curb during the incident in which protesters surrounded officers and a police cruiser, and no one was arrested for failing to move to the sidewalk once the protest had been declared unlawful. However, demonstrators' allegations that officers began pushing them without first giving them sufficient time to move voluntarily are supported by video footage of the incident. Acknowledging that MPD probably rightly determined that demonstrators' act of "swarm[ing] the officers" created a public safety hazard, the demonstrators were not given sufficient time to voluntarily move back before officers began forcefully pushing protesters with batons. They also were given little to no time to voluntarily back up toward the sidewalk once the demonstration had been declared unlawful. It appears the police line moved in and began pushing as soon as the dispersal order was given.

MPD complied with the Act's requirement to limit arrests to specific, non-compliant demonstrators for whom there was probable cause. MPD did not round up and arrest large groups for the misdeeds of a few. As reported above, only two people were arrested in connection with this incident. One person was arrested for assault on a police officer, and one person was arrested for destruction of police property.

MPD appears to have complied with the Act in declaring the protest unlawful and ordering dispersal, as the Act permits dispersal for group-wide failure to comply with reasonable time place and manner restrictions. Allowing the group to march in the streets without a permit while requiring them to do so in a way that would not cause major traffic disruptions was a reasonable, time, place, and manner restriction. The demonstrators' apparent unwillingness to accept those terms, evidenced by surrounding the officers and engaging in defiant behavior, created a public safety problem that justified suspending the protest.

MPD initially failed to comply with the Act's requirement to give demonstrators reasonable and adequate time to disperse and a clear and safe route for dispersal. Video footage of the incident shows that within moments after ordering protesters to move to the sidewalk, a line of officers, some with batons, began forcefully pushing the protesters toward the sidewalk. The protesters were not given the opportunity to walk away before they were herded toward the sidewalk in front of James Monroe Park. The protesters also were not given a safe and clear way to disperse. They were forced to back up towards a fence beyond which they could not move, and this prevented those at the front of the group from fitting on the sidewalk. MPD asserts that officers were unaware of the fence at first, but once officers realized that the protesters could not back up further, they were allowed to walk around the fence and into the park. There is no evidence to suggest that MPD acted in bad faith in not noticing at the outset that the fence would prevent all of the demonstrators from fitting on the sidewalk. Even so, this error contributed to the "pepper spraying," which temporarily caused extreme physical discomfort to many protesters and effectively prevented them from regrouping and resuming their demonstration.

MPD apparently acted lawfully in authorizing formation of a police line; however, actions taken by officers on the line, such as immediately pushing protesters with batons before they had the chance to move voluntarily, seem to have violated the spirit if not the letter of the Act. The Act generally forbids use of police lines to encircle or trap demonstrators. However, it permits use of police lines where necessary to protect the safety of demonstrators. In this instance, MPD's goals were to protect the demonstrators from traffic on Pennsylvania Avenue and to protect drivers from being overtaken by parading demonstrators, both of which were legitimate safety measures.

The Act prohibits using riot gear and chemical irritants except in certain exceptional circumstances. MPD officers did not wear riot gear and most did not use chemical irritants. However, one MPD officer appears to have violated the Act by taking out a small can of pepper spray and discharging it on protesters who were on the ground after having fallen and who already had been sprayed extensively by a federal officer. Moreover, MPD states that even though the MPD officer's can of pepper spray was small, it could have had an effect in that circumstance. The First Amendment Assemblies Act forbids use of chemical irritants except in circumstances where demonstrators or others are "endangering public safety." At this point, the demonstrators had been pushed by the police line, had fallen on top of other protesters, and had been "pepper sprayed" by the Federal Protective Service officer. They were not therefore endangering public safety when the MPD officer discharged his pepper spray.

Although the MPD officer's act of discharging pepper spray was questionable, the actions of the Federal Protective Service officer, who was assisting MPD, were more problematic. The federal officer sprayed a significant amount of pepper spray on the protesters from a large canister, which the First Amendment Assemblies Act prohibits MPD officers from carrying unless approved by a commanding officer at the scene and unless deemed necessary to protect officers from physical harm or to arrest resisting subjects. The federal officer's blast of pepper spray temporarily caused many demonstrators to experience extreme pain, which appears to have deterred them from resuming their protest. This officer was one of four federal officers assisting MPD at the location where the incident took place. However, MPD did not coordinate its actions with its federal counterparts, and the federal officer who sprayed the pepper spray did not act with either explicit or tacit approval of MPD.

Another instance on Saturday, April 25, 2009, in which federal officers who assisted MPD with protest activities engaged in conduct that violated the spirit of the First Amendment Assemblies Act occurred in the morning between 8:00 a.m. and 9:00 a.m. at the National Law Enforcement Officers Memorial at the Judiciary Square Metrorail station. An OPC monitor was stationed there in anticipation of an anti-capitalism demonstration promoted by the two main protest organizers, GAJ and SDAC. The OPC monitor observed three U.S. Park Police officers and two MPD officers. An armored personnel vehicle (APV) operated by Park Police officers was parked in front of the northern bank of escalators leading to the Judiciary Square Metrorail station. Additionally, one Park Police officer held a video camera and appeared to be recording images of everyone who emerged from the metro station. At the same time, two helicopters with blue markings flew overhead, but it was unclear to which police force the helicopters were connected. The OPC monitor noted that the sight of the APV parked in front of the metro

escalators as well as the use of a video recorder by a U.S. Park Police officer could have had a chilling effect on potential demonstrators.

Finally, MPD complied with its obligation to grant media representatives full access to areas where protesters were demonstrating even though the presence of several press representatives on and around the sidewalk where protesters were ordered to go arguably contributed to the lack of sufficient room to comply with the dispersal order. MPD seems rightly to have determined that members of the press had a right to remain close so they could seek to document what was happening.

PCB finds that MPD's substantial compliance with the Act demonstrates the department's continuing commitment to abide by the Act's goal of creating an atmosphere in the District where people feel free to gather publicly and peaceably express their views without fear. In assessing MPD's compliance, PCB is again struck by the difference between MPD's approach to handling First Amendment demonstrations and that of the federal officers who assisted MPD. PCB also noted this in its 2007 protest monitoring report.⁴⁴ PCB realizes that given the District's unique status as the seat of the nation's government, it is necessary for MPD to work closely with federal law enforcement agencies and appreciates the availability and willingness of federal law enforcement agencies to assist with First Amendment demonstrations, even those that take place solely on District-controlled public space. Nevertheless, PCB is concerned that the participation of federal officers who are free to take actions during First Amendment gatherings that are inconsistent with the First Amendment Assemblies Act has the potential to prevent the District from fully realizing the outcomes envisioned in passing the Act: free speech assemblies and demonstrations facilitated rather than thwarted by the presence and participation of law enforcement officers.

PCB notes that in enacting the First Amendment Assemblies Act, the District specifically sought to achieve a break with past practices of employing overzealous crowd control tactics that had the potential to infringe the right of the public to gather and collectively engage in free expression. The Act sought to establish the District as a model where people from around the nation could come, assemble, and demonstrate without being subjected to aggressive, militaristic police presence and tactics that could have a chilling effect on First Amendment expression.⁴⁵ MPD, to its credit, has gone to great lengths to adopt major changes required by the Act. Indeed, MPD's willingness to seek to comply with the Act is largely responsible for the success of numerous First Amendment demonstrations that have taken place in the District since passage of the Act.

⁴⁴ See Police Complaints Board 2007 Protest Monitoring Report and Recommendations (June 26, 2007), available at http://dcpc.dc.gov/occr/frames.asp?doc=/occr/lib/occr/protest_monitoring_report_final.pdf.

⁴⁵ An example of how the District has inspired change in other jurisdictions is seen in New York City, where a bill modeled on the District's First Amendment Assemblies Act is pending before the New York City Council. See The New York City Council, Legislative Research Center at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=451870&GUID=79C6154A-9E81-4A01-B43B-EB905EEC2D0A&Options=ID|Text|&Search=First+Amendment+Assemblies> (last visited Sept. 17, 2009); see also <http://assembleforrightsny.org/> (last visited Sept. 17, 2009).

To ensure that the goals of the First Amendment Assemblies Act are able to be fulfilled even when MPD is assisted by federal officers, PCB believes that the District should seek to obtain federal law enforcement agencies' voluntary compliance with the District's First Amendment Assemblies Act. Arranging for federal law enforcement agencies to comply voluntarily with the First Amendment Assemblies Act would greatly benefit MPD, the federal law enforcement agencies with whom MPD partners, and the public by ensuring consistency in the method of handling First Amendment protests. Managing First Amendment assemblies would be easier for MPD if it could rely on its federal partners to handle issues that arise during demonstrations in the same manner as MPD is required to do by law. This might also limit District liability for damages in civil actions stemming from incidents that take place during First Amendment assemblies. The arrangement also would benefit the federal law enforcement agencies by providing them useful guidance in advance of demonstrations during which they are expected to assist MPD and by reducing the chance of conflicts and confrontations that could lead to officer injuries. Such cooperation also would benefit members of the public by eliminating vast differences in how demonstrators are treated during First Amendment assemblies held on District land when a federal agency assists MPD with a protest. Moreover, reducing such inconsistency has been shown to engender greater respect for and compliance with public law.

PCB notes, moreover, that MPD has entered cooperative agreements with federal law enforcement agencies for similar purposes, i.e., to obtain or provide assistance with law enforcement duties in specific contexts, and that MPD has been able to obtain the compliance of its federal partners with certain District legal standards where necessary. An example is the cooperative agreement between MPD and the FBI pursuant to which the FBI assists MPD with carrying out crime prevention and law enforcement in specified areas, particularly those near FBI headquarters. Pursuant to that agreement, MPD provides training to the FBI on D.C. Code provisions, and among the requirements of District law that the FBI voluntarily complies with are those governing arrest and handling of juvenile offenders.⁴⁶

VII. CONCLUSION AND RECOMMENDATIONS

PCB is encouraged that over a three-day period during which several organized and impromptu anti-globalization protests took place, there was only one notable confrontation between protesters and MPD officers. However, the incident that did occur resulted in numerous minor, temporary injuries—e.g., burning from pepper spray and discomfort from the pushing, shoving, and falling caused by the police line—and the demonstration was cut short, an outcome that runs counter to the goals of the First Amendment Assemblies Act. PCB recognizes that responsibility for this outcome does not rest solely with MPD: the demonstrators' guiding philosophy and modus operandi as well as the Federal Protective Service officer's lack of any obligation to comply with the First Amendment Assemblies Act were contributing factors. Nevertheless, there are specific steps which the District of Columbia government and MPD

⁴⁶ See Cooperative Agreement, Federal Bureau of Investigation Police and MPDC (March 22, 2001), available at http://mpdc.dc.gov/mpdc/cwp/view,a,1242,q,546836,mpdcNav_GID,1541.asp (last visited September 22, 2009).

should undertake to avoid such an occurrence in the future. Accordingly, PCB recommends the following:

- 1. The District, through concerted effort by the Mayor, D.C. Council, and MPD Chief of Police, should seek to obtain voluntary compliance with the First Amendment Assemblies Act by those federal law enforcement agencies that routinely assist MPD with First Amendment demonstrations on District-controlled public space. The District may wish to enter voluntary memoranda of agreements with these agencies, pursuant to which MPD would provide training and guidance on the operation and application of the First Amendment Assemblies Act in exchange for a voluntary commitment from the cooperating agencies to comply with the terms of the Act when assisting MPD with First Amendment demonstrations.**

Obtaining federal law enforcement agencies' voluntary compliance with the First Amendment Assemblies Act when their officers assist MPD with demonstrations on District-controlled public space would help ensure accomplishment of the goals and purposes of the First Amendment Assemblies Act: namely, to establish the District as a place where people are free to assemble and peaceably express their views without fear of penalization and where such constitutionally protected action is facilitated rather than thwarted by the presence and participation of law enforcement.

- 2. MPD should continue to offer training to its Civil Disturbance Unit and, as appropriate, to other officers that emphasizes compliance with the First Amendment Assemblies Act. In the course of its training, MPD should review the incident that unfolded April 25, 2009, and discuss how the outcome could have been better. In particular, the training should focus on provisions of the First Amendment Assemblies Act that address: giving demonstrators the opportunity to comply voluntarily with time, place, and manner restrictions; giving demonstrators reasonable and adequate time to disperse; giving demonstrators a clear and safe route for dispersal; limiting use of police lines; and prohibiting use of chemical irritants except in rare circumstances.**