

# **Monitoring of Antiwar and Anti-Globalization Protests September 2005**



**Report and Recommendations of the  
Police Complaints Board**

to

**Mayor Anthony A. Williams,  
The Council of the District of Columbia, and  
Chief of Police Charles H. Ramsey**

**December 20, 2005**

**Police Complaints Board**

**Maria-Cristina Fernández, Chair  
Dr. Patricia Fisher  
Michael Sainte-Andress  
Marc Schindler**

730 11th Street, NW, Suite 500  
Washington, DC 20001  
(202) 727-3838

Website: [www.policecomplaints.dc.gov](http://www.policecomplaints.dc.gov)

## Table of Contents

I.	Introduction and Overview .....	1
II.	First Amendment Assemblies Act of 2004.....	4
	A. General Information and Historical Background.....	4
	B. Provisions Monitored.....	6
III.	Protest Events.....	8
	A. Antiwar Rally and March.....	9
	B. Anti-Globalization Protests.....	9
IV.	Monitoring Plan .....	9
	A. Initial Monitoring Effort .....	9
	B. OPC Deployment.....	10
	C. Coordination with MPD.....	10
	D. OPC Complaints .....	11
V.	Monitoring Observations .....	11
	A. General Interactions with the Public.....	11
	B. Police Contacts with Protest Groups.....	11
	C. Permitted March.....	12
	D. Unpermitted Marches.....	12
	E. Dispersal Orders.....	12
	F. Police Lines.....	13
	G. Arrests .....	13
	H. Illegal Activity .....	13
	I. Treatment of the Media.....	14
	J. Use of Riot Gear .....	14
	K. Officer Identification .....	14
	L. Other Monitoring Groups .....	15
	M. Other Police Departments.....	15
VI.	Conclusions and Recommendations .....	15

## I. INTRODUCTION AND OVERVIEW

The Police Complaints Board (PCB), the governing body of the Office of Police Complaints (OPC), submits this report and recommendations pursuant to its statutory authority to make recommendations to the Mayor, the Council of the District of Columbia, and the Chief of the Metropolitan Police Department (MPD) that, if implemented, may lower the occurrence of police misconduct,<sup>1</sup> and its authority to monitor and evaluate MPD's handling of First Amendment assemblies.<sup>2</sup> The District of Columbia added the authority to monitor and evaluate MPD's handling of First Amendment assemblies to PCB's jurisdiction through the First Amendment Rights and Police Standards Act of 2004 (the Act), a law that took effect in April 2005 following Congressional review.

The Act articulates the District of Columbia's official policy on First Amendment assemblies and, among other things, establishes specific standards of police conduct when handling protests or demonstrations. These standards prohibit MPD from employing crowd control tactics during protests that have the potential to deprive demonstrators of the right to assemble peaceably and express their views.

Between Thursday, September 22, 2005, and Monday, September 26, 2005, an estimated 150,000 people from across the nation participated in antiwar and anti-globalization protests in the District of Columbia. These protests were the first major events to take place in Washington following enactment of the new law. OPC, pursuant to the agency's new authority, deployed 12 members of its staff to monitor MPD's interactions with protesters throughout the day on Saturday, September 24, 2005.<sup>3</sup> Because the demonstrations held that day took place on both

---

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> PCB would like to acknowledge the assistance of OPC's staff in conducting the protest monitoring on September 24, 2005, and with preparing this report and recommendations. The agency's work was coordinated and supervised by OPC's executive director, Philip K. Eure, deputy director, Thomas E. Sharp, and special assistant, Angela M. Kiper. In addition, the following OPC staff members served as monitors: Chief Investigator Clifford C. Stoddard, Jr., Assistant Chief Investigator Keshia Taylor, Senior Investigator Natasha Bryan, Senior Investigator Megan Rowan, Investigator David Curcio, Investigator Alan Peyrouton, Public Affairs Specialist Melanie Deggins, Staff Assistant Sonja Wingfield, and law clerk Jon Feldon, a student at American University's Washington College of Law.

We are also grateful to Commander Cathy Lanier, Captain Jeffrey Herold, Captain Brian Bray, Lieutenant Steven Sund, and Lieutenant Gary Fitzgerald of MPD's Special Operations Division, for providing crucial information and assistance to OPC as it planned and carried out its monitoring effort.

Lastly, we would like to thank Chief Charles H. Ramsey, Assistant Chief Winston Robinson, Assistant Chief William R. Ponton, Inspector Glenn C. Shearod, and General Counsel Terrence Ryan for their cooperation and assistance.

federal and District of Columbia land, several federal law enforcement officers, including officers from the U.S. Park Police, the U.S. Secret Service Uniformed Division, and the Federal Bureau of Investigation (FBI) were present in addition to MPD officers. Because the Act applies only to the District of Columbia's police officers, OPC concentrated on observing the actions of MPD officers. This report summarizes OPC's observations and makes recommendations based on those observations.<sup>4</sup>

OPC focused its monitoring on Title I of the Act. Title I, known as the First Amendment Assemblies Act of 2004, requires MPD to: (1) permit persons to engage in First Amendment demonstrations even if they have not given notice or obtained approval; (2) seek voluntary compliance with reasonable time, place, and manner restrictions; (3) limit arrest and citation to specific non-compliant demonstrators for whom there is probable cause; (4) refrain from dispersing demonstrators unless there is widespread unlawful conduct; (5) provide multiple audible warnings, a clear dispersal route, and sufficient time to disperse, when dispersal is deemed necessary; (6) refrain from using police lines to surround demonstrators unless there is widespread unlawful conduct; (7) enhance the visibility of officers' names and badge numbers; (8) refrain from using riot gear unless there is a danger of violence; (9) refrain from using chemical irritants to disperse demonstrators unless demonstrators are endangering public safety; and (10) grant the media full access to areas where demonstrations take place.<sup>5</sup>

OPC's overall impression is that MPD performed in a professional and commendable manner and effectively balanced the interests of public safety with the right to free expression. MPD's general interaction with the public appeared cordial, helpful, and respectful. During the marches, MPD officers were alert and attentive, yet unimposing, unobtrusive, and non-confrontational. MPD officers assisted protest organizers with major logistics and provided help to individuals with smaller issues. In several instances, MPD officers made accommodations to protesters, such as moving police vehicles and barricades to allow protesters to proceed down paths that had initially been cordoned off. MPD officers offered and provided escorts and traffic control to anti-globalization protesters whose march routes had not been finalized in advance. Several demonstrators expressed compliments about MPD's professionalism.

Throughout the day, several unpermitted "snake" marches broke off from the main marches. MPD allowed these marches to take place and followed at a distance that was sufficient to provide police protection if necessary but far enough behind to permit the demonstrators freedom of movement and expression.

MPD officers did not use police lines to encircle or entrap demonstrators. A type of police line was used, however, as a protective buffer between antiwar demonstrators and

---

<sup>4</sup> As detailed later in this report, OPC endeavored to observe MPD's interactions with demonstrators from as many different vantage points as possible throughout the course of the day on September 24, 2005. However due to the size of OPC's staff, the agency could not and did not observe every noteworthy incident that occurred during the protests and related events.

<sup>5</sup> OPC was prepared to monitor provisions governing the restraint and processing of demonstrators who are arrested; however, since MPD did not conduct mass arrests on September 24, 2005, OPC did not have occasion to observe MPD's adherence to those provisions.

counter-protesters at the FBI headquarters building on Pennsylvania Avenue, N.W. This protective buffer was comprised of not only MPD officers but also U.S. Park Police officers and FBI uniformed officers

OPC did not see MPD officers order any demonstrators to disperse. However, OPC witnessed demonstrators voluntarily disperse when MPD officers moved in to effect the arrest of a few demonstrators who had engaged in property damage in the vicinity of a construction site near 11th and K Streets, N.W. Some OPC monitors witnessed the arrest of approximately three persons in connection with this incident. MPD did not conduct any mass arrests of demonstrators on Saturday, September 24, 2005.

With respect to MPD handling of demonstrators who engaged in illegal activity, OPC's monitors observed a few persons who had participated in the anti-globalization demonstrations engage in property damage. The MPD officers who were nearby when these acts occurred did not move in to make arrests immediately. OPC's understanding is that the officers were awaiting permission to arrest from higher-ranking officers. This practice seemed to permit more property damage to occur than would have if officers were authorized to move in and arrest as soon as illegal activity began. OPC recognizes that MPD's hesitation to arrest may have been occasioned by its efforts to comply with provisions of the First Amendment Assemblies Act that require MPD to refrain from dispersing and arresting demonstrators unless they can identify the specific individuals responsible for illegal activity.

OPC did not see any MPD officers wearing riot gear, although one OPC monitor saw an MPD Civil Disturbance Unit platoon with gas masks strapped to their legs. However, that monitor also witnessed a senior MPD officer order the removal of those gas masks. OPC did not witness any uses of chemical irritants by MPD officers.

Nearly all MPD officers whom OPC's monitors encountered displayed their nameplates and badge numbers. Even so, it was difficult to see most officers' names or badge numbers without standing very close to the officers. Moreover, there were several instances in which MPD officers' identification was not visible, despite the Act's requirement that identification be more visible. Specifically, the nameplates and badges of MPD officers who wore yellow-green mesh vests and who wore rain gear when it began raining were obscured. In contrast, it was easy to identify those MPD officers on bicycles or motor scooters who wore helmets on which badge numbers had been painted in large type-face. Aside from noting the need for MPD officers' names and badge numbers to be made more visible, OPC also noted that it was sometimes difficult distinguishing MPD officers from other law enforcement officers present because of similarities in their uniforms.

OPC saw no instances of MPD denying members of the press access to any part of the antiwar or anti-globalization demonstrations.

Several factors appear to have contributed to the peaceful character of the demonstrations that took place Saturday, September 24, 2005: (1) the majority of the demonstrators, including antiwar, anti-globalization, and counter-protesters, were nonviolent, peaceful protesters; (2) protesters were permitted to parade near the objects of their protests, the White House in the case of antiwar protesters and the IMF/World Bank complex in the case of anti-globalization

protesters; and (3) MPD made a deliberate, concerted effort to comply with the provisions of the Act.

Based on OPC's observations, PCB commends MPD for the manner in which it worked with groups and individuals to facilitate their exercise of First Amendment rights. PCB offers the following recommendations based on its observations:

(1) MPD should repeat the approach it employed in preparing its officers for the September 2005 protests. It was obvious that MPD had gone to great lengths to educate and train its officers about changes in mass demonstration procedures that have been mandated by the First Amendment Assemblies Act of 2004. MPD's efforts to comply with the new law appeared to result in a better experience for protesters and the police. Such a positive approach should be continued indefinitely.

(2) MPD should find a way to make all officers' names and badge numbers more visible. With the exception of bicycle and motor scooter officers wearing helmets on which badge numbers had been affixed in large letters, it was difficult to see the names and badge numbers of most officers wearing normal uniform gear without being immediately in front of an officer. It is also important that MPD devise a way for those officers who are required to wear mesh vests, raincoats, or any other coverings to still display their names and badge numbers. OPC further recommends that MPD consider adding some marking to its uniforms that clearly distinguishes MPD officers from other law enforcement officers.

(3) MPD should examine its street closing procedures. Although many streets were closed early, it appeared that others were permitted to remain open too close to the time the marches began. OPC recognizes this likely was done to accommodate the interest of non-demonstrators. However, the confusion that resulted as some non-demonstrators got caught in street closings near the time the marches began seemed to work to the disadvantage of non-demonstrators.

(4) Where possible, MPD should take steps to ensure that all of its officers, particularly non-supervisory officers, are informed of OPC's presence and role so that OPC's monitors will not be impeded in carrying out their monitoring of protests or demonstrations.

(5) MPD should consider revising its policy regarding arrest of demonstrators whom officers observe engaging in illegal activity. OPC recommends that lower-level officials be given authority to order arrests if they witness and are able to identify specific persons engaged in illegal activity. Requiring officers to await approval of a higher-level supervisory officer appears to result in the commission of a greater degree of illegality than should be permitted. This is particularly important in the case of property damage.

## **II. FIRST AMENDMENT ASSEMBLIES ACT OF 2004**

### **A. General Information and Historical Background**

The First Amendment Rights and Police Standards Act of 2004 took effect in the District of Columbia on April 13, 2005. The Act establishes and declares the District of Columbia's

official policy on First Amendment protests: In the District of Columbia, persons and groups have a right to engage in peaceful First Amendment demonstrations in or on public space controlled by the District of Columbia – particularly places near the object of the demonstrators’ protest so they can be seen and heard – subject solely to reasonable restrictions designed to protect public safety and to accommodate competing rights of non-demonstrators.<sup>6</sup> The Act requires the District of Columbia’s police department 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.<sup>7</sup>

The District of Columbia Council enacted this law in direct response to an investigation it conducted into MPD’s handling of antiwar and anti-globalization demonstrations that took place between 2000 and 2002, including a demonstration that took place during the Presidential inauguration of 2001 and an IMF/World Bank protest held in Pershing Park in September 2002. The Council found that MPD had: used undercover officers to infiltrate and surveil political organizations in the absence of criminal activity; employed aggressive crowd control tactics, such as using police lines to encircle protesters, using OC spray indiscriminately, ordering demonstrators to disperse without warning and without a way to comply, and arresting peaceful demonstrators without probable cause; and had subjected demonstrators who were arrested to prolonged post-arrest processing and wrist-to-ankle restraints that unduly restricted the demonstrators’ ability to move.<sup>8</sup> The Council concluded that MPD overzealously sought to preempt criminal activity and in so doing infringed the right of persons to assemble and protest peacefully in the District of Columbia.<sup>9</sup> The Council recommended extensive changes in police handling of mass demonstrations.<sup>10</sup> Those recommendations largely have been adopted in the Act.

The Act has three major titles. Title I, the First Amendment Assemblies Act of 2004, contains the official statement of the District of Columbia’s policy on First Amendment demonstrations and contains the provisions that govern conduct of MPD officers during protests, including procedures for handling protesters who are arrested during demonstrations. Title II, the Police Investigations Concerning First Amendment Activities Act of 2004, limits MPD investigations of First Amendment activities to circumstances where there is reasonable suspicion of criminal activity, and it expressly prohibits investigatory tactics that infringe upon First Amendment rights in the absence of a clearly justified law enforcement purpose.<sup>11</sup> Title III, the First Amendment Assembly Enforcement and Procedure Act of 2004, requires MPD to adopt

---

<sup>6</sup> D.C. Official Code § 5-331.01, *et seq.*

<sup>7</sup> D.C. Official Code §§ 331.05 through 331.17.

<sup>8</sup> *See* Council of the District of Columbia Committee on the Judiciary, Report on Investigation of Metropolitan Police Department’s Policy and Practice in Handling Demonstrations in the District of Columbia, March 24, 2004. *See also* Mary M. Cheh, *Legislative Oversight of Police: Lessons Learned from an Investigation of Police Handling of Demonstrations in Washington*, 32 NOTRE DAME J. LEGIS. 1 (2005), available at <http://ssrn.com/abstract=852765>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> D.C. Official Code §§ 333.01 through 333.13.

procedures for handling post-and-forfeit misdemeanor offenses – the most common category of offenses charged during mass arrests of First Amendment protesters – that clearly and accurately inform arrestees of the meaning and consequences of post-and-forfeit procedures. This title also requires MPD officers to display their nameplates and badge numbers whenever they are in uniform and requires them to identify themselves verbally when requested to do so by members of the public.<sup>12</sup>

## **B. Provisions Monitored**

OPC's monitoring focused on those provisions of Title I of the First Amendment Assemblies Act of 2004 that govern police conduct during demonstrations and that permit persons to gather and demonstrate without notice and approval of an assembly plan. Specifically, OPC monitored Sections 105, 107, 108, 109, 114, and 116.<sup>13</sup>

### ***Section 105:***

- Provides that it is not an offense to engage in a First Amendment demonstration without notice or an approved assembly plan.
- Exempts from the notice and plan approval requirement:
  - Protests attended by fewer than 50 people held in a place other than a District street,
  - Protests that occur entirely on sidewalks and crosswalks without impeding pedestrian traffic, and
  - Spontaneous protests that develop as an immediate response to a public event.

### ***Section 107*** requires MPD officers to:

- Seek demonstrators' voluntary compliance with reasonable time, place and manner restrictions;
- Refrain from making arrests or issuing citations unless there is probable cause;
- Limit arrests and citations to specific individuals who fail to comply with reasonable time, place and manner restrictions;
- Refrain from ordering demonstrators to disperse in response to unlawful conduct where it is possible to disperse, control, or arrest the specific persons engaged in the unlawful conduct;

---

<sup>12</sup> D.C. Official Code §§ 335.01, 337.01.

<sup>13</sup> D.C. Official Code §§ 331.05, 331.07 through 331.09, 331.14, 331.16. OPC also planned to monitor police conduct related to sections, 110, 111, 112 and 113 of the Act, which relate to processing of demonstrators who are arrested. D.C. Official Code §§ 331.10 through 331.13. Since no mass arrests occurred on September 24, 2005, OPC did not have occasion to observe the extent of MPD's adherence to those provisions.



*Section 107* permits MPD officers to issue a general order to disperse only where:

- A significant number or percentage of demonstrators fails to comply with reasonable time, place, and manner restrictions, and seeking voluntary compliance and targeting specific non-compliant persons are not reasonably likely to work;
- A significant number or percentage of the demonstrators are engaging in or are about to engage in unlawful disorderly conduct or violence toward persons or property; or
- A public safety emergency (based on events other than the mere occurrence of the assembly) has been declared by the Mayor, and the Chief of Police determines that the emergency necessitates dispersal of the assembly.

If MPD determines that the criteria for issuing a general dispersal order have been met, officers must:

- Issue a clearly audible and understandable dispersal order using an amplification system or device;
- Give demonstrators a reasonable and adequate time to disperse; and
- Give the demonstrators a clear and safe route for dispersal.

*Section 107* also:

- Requires MPD to handle assemblies that occur without notice and plan approval in the same manner as assemblies that have provided notice.
- Forbids ordering demonstrators to disperse based solely on the fact that notice of the assembly was not given.

*Section 108:*

- Forbids the use of police lines to encircle or entrap demonstrators unless:
  - There is probable cause to believe that a significant number of people have committed unlawful acts, and
  - The police have the ability to identify specific violators and have decided to arrest them, or
  - Using a police line is necessary to protect the safety of the demonstrators.

*Section 109:*

- Requires MPD officers policing an assembly to display their names and badge numbers with enhanced visibility at all times, even if they are wearing riot gear.

***Section 114:***

- Requires MPD to allow media representatives reasonable access to all areas where an assembly is occurring, at minimum allowing the same access as the general public.
- Requires MPD to honor media credentials issued by or officially recognized by the MPD, and
- Requires MPD to make reasonable accommodations to allow media representatives to use photographic, video or other reporting equipment.

***Section 116:***

- Prohibits use of riot gear except when there is a danger of violence.
- Prohibits use of chemical irritants to disperse an assembly unless participants are endangering public safety.

**III. PROTEST EVENTS**

From Thursday, September 22, 2005, through Monday, September 26, 2005, several major First Amendment demonstrations took place in the District of Columbia. Antiwar demonstrators protesting the war in Iraq and demanding withdrawal of U.S. troops from Iraq held meetings, rallies, marches, a concert, and, on Monday, a sit-in on the sidewalk in front of the White House.<sup>14</sup>

Anti-globalization demonstrators protesting global trade policies that they contend exploit the human, political, and environmental resources of weaker nations staged demonstrations near the site of the headquarters of the International Monetary Fund and the World Bank, whose annual fall meetings took place Friday, September 23, 2005, through Sunday, September 25, 2005. In addition to marches and rallies near the IMF/World Bank complex, anti-globalization protesters staged “Adopt-an-Intersection” campaigns, during which protesters blocked intersections en route to the IMF/World Bank complex, thereby delaying IMF and World Bank delegates as they traveled to their meetings.

Antiwar and anti-globalization protesters joined forces on Saturday, September 24, 2005, for a large antiwar march that paraded directly in front of the White House. In addition to the antiwar and anti-globalization demonstrations, several hundred counter-protesters, expressing support for the war in Iraq, held rallies on Saturday, September 24, 2005, and Sunday, September 25, 2005. During the main antiwar march, counter-protesters stationed themselves near the FBI

---

<sup>14</sup> The White House sidewalk sit-in that took place Monday, September 26, 2005, resulted in the arrest of more than 300 demonstrators. The First Amendment Rights and Police Standards Act of 2004, was not implicated, however, because the demonstrators’ actions occurred on federal property, and the arrests were conducted by U.S. Park Police officers. See Petula Dvorak, *White House Sidewalk Protest Leads to Arrest of About 370*, Washington Post, September 27, 2005, at B1.

headquarters building on Pennsylvania Avenue, N.W. As antiwar protesters paraded past, the rival groups shouted opposing positions at each other.

#### **A. Antiwar Rally and March**

The main antiwar demonstrations of the weekend took place on Saturday, September 24, 2005. A broad array of antiwar protesters led by the ANSWER Coalition and United for Peace and Justice sponsored a rally at the Ellipse behind the White House, a march that paraded directly in front of the White House, and a concert dubbed Operation Ceasefire, which was held on the grounds of the Washington Monument. The antiwar march drew a vast number of participants from all over the nation. Estimates ranged from 100,000 to 300,000. When asked, MPD Chief Ramsey indicated that 150,000 was “as good a guess as any.”<sup>15</sup> The rally at the Ellipse, which featured speeches by antiwar activists, took place between 11:00 a.m. and 1:00 p.m. The march began at approximately 1:00 p.m.

The march route, which was chosen to be close to the White House, went from the Ellipse to the front of the White House, and from the White House north and then east toward the Justice Department, past the National Mall, and back to the Ellipse. Due to the large number of demonstrators, the march lasted for approximately four hours.

Shortly after the march began, just before the front of the march reached the White House, antiwar protesters were joined by a feeder march of anti-globalization demonstrators who had just finished rallying and marching between Dupont Circle and the IMF/World Bank complex.

#### **B. Anti-Globalization Protests**

Although small anti-globalization demonstrations took place at various points between Thursday, September 22, 2005, and Sunday, September 25, 2005, the main anti-globalization protest took place on Saturday, September 24, 2005. Mobilization for Global Justice organized a rally and march that began at Dupont Circle and proceeded down Connecticut Avenue to 17th Street, turned west on H Street, N.W., and continued on H Street until the marchers reached Murrow Park and the World Bank at 18th and H Streets, N.W. The demonstrators then headed east on H Street, N.W., and marched to Lafayette Park, where they joined the main antiwar march just before it paraded in front of the White House. The separate anti-globalization rally and march was attended by an estimated 1,500 to 2,000 protesters.

### **IV. MONITORING PLAN**

#### **A. Initial Monitoring Effort**

The antiwar and anti-globalization protests held in the District of Columbia from September 23, 2005, through September 26, 2005, were the first major protests to take place in

---

<sup>15</sup> See Petula Dvorak, *Antiwar Fervor Fills the Streets; Demonstration is Largest in Capital Since U.S. Military Invaded Iraq*, Washington Post, September 25, 2005, at A1.

the District of Columbia since the First Amendment Assemblies Act of 2004 took effect. These events provided the first significant opportunity for PCB to exercise its new authority to monitor and evaluate police practices during First Amendment demonstrations. Because OPC is a small agency with limited staff and resources, that agency's initial monitoring effort was focused on monitoring the weekend's main protest events, which took place on Saturday, September 24, 2005. OPC's purpose in monitoring these events was to observe MPD's interactions with demonstrators and to report on those observations so it could be determined the extent to which MPD complied with the First Amendment Assemblies Act. OPC's participation in this event also was undertaken for the express purpose of developing an OPC monitoring protocol and to assess the agency's needs as it carries out its monitoring function in the future.

## **B. OPC Deployment**

OPC deployed 12 staff members to observe the events of September 24, 2005. They were divided into four foot-patrol teams; two ride-alongs, who accompanied MPD Special Operations Division (SOD) commanders in police vehicles; and one command center observer stationed for a portion of the day at the MPD Joint Operations Command Center (JOCC), who observed video footage of the events as they occurred and who had the opportunity to monitor decisions being made and communicated back and forth to the field command. The objective of this arrangement was to view as much as possible from the vantage points of the demonstrators and the police.

OPC's four foot patrol teams were assigned to three major zones where First Amendment activity was expected to take place. Zone 1 covered the area that was the focus of the IMF/World Bank protests – Dupont Circle, North Murrow Park, the IMF/World Bank complex, and march routes established from those areas to the antiwar protest near the White House. Zone 2 included the White House and several parks – Lafayette Park, Farragut Square, McPherson Square, Franklin Square, and the intersection of 15th Street and Pennsylvania Avenue, N.W. – where antiwar and anti-globalization protesters were expected to gather and rally before the main march began. Zone 3 included those areas where the main antiwar rally and march and the main counter-protests were expected to occur – the Ellipse, Pershing Park, the antiwar protest march route, the Navy Memorial, the Justice Department, and the FBI headquarters building. One of OPC's foot-patrol teams was accompanied by a reporter from the Washington Post for a portion of the day.

OPC's monitors wore blue T-shirts with the agency's acronym printed in white, capital letters. The monitors also carried their District of Columbia employee identification and their OPC agency credentials. OPC's monitors were equipped with note pads, hand-held digital recorders, and cameras. One of the foot-patrol teams was equipped with a video camera. Monitors also carried small OPC information cards to hand out if any of the demonstrators requested information about filing a police misconduct complaint, although the teams' primary purpose was to observe the protest events.

## **C. Coordination with MPD**

OPC coordinated extensively with MPD before and during the protest events. OPC's executive director and deputy director met with Chief Charles Ramsey, Assistant Chief Winston

Robinson, General Counsel Terrence Ryan, and other MPD staff to inform MPD of OPC's plan to monitor and evaluate the antiwar and anti-globalization protests scheduled for September 24, 2005, and to obtain information from MPD about the events and MPD's plans and preparations for the events. OPC subsequently met with and conferred repeatedly by telephone with Captain Jeffrey Herold, one of the commanding officials in MPD's SOD. Captain Herold provided OPC with detailed information regarding all of the major protest events that were expected to take place between September 23 and September 26, 2005. Captain Herold also arranged for OPC staff to accompany him and other senior SOD staff during the events. Captain Herold's role as a liaison to OPC proved significant, as he was able during the events to resolve problems OPC's monitors occasionally experienced in being allowed behind police lines.

#### **D. OPC Complaints**

To date, OPC has received only one complaint from a member of the public alleging police misconduct in connection with the September 2005 antiwar protests. The complainant, a resident of the state of Iowa, alleged that on September 23, 2005, at approximately 7:30 p.m. as he was leaving a peace rally held on the Mall, accompanied by his wife and son, two MPD officers, one of whom allegedly was in plain clothes, yelled at him, wrongly accused him of illegally crossing the street, and wrongfully arrested him for disorderly conduct when he protested their assertions and demanded that the plainclothes officer identify himself. OPC is currently investigating the complaint.

### **V. MONITORING OBSERVATIONS**

#### **A. General Interactions with the Public**

OPC's monitors observed positive interactions between MPD and the public. Before the protests began, OPC monitors witnessed MPD officers answering questions and providing directions to demonstrators, many of whom had traveled to Washington from other places and were not familiar with downtown Washington. Once the protests began, MPD officers, though visible in greater numbers, appeared calm and non-threatening. OPC monitors noticed that during encounters between antiwar protesters and counter-demonstrators, which frequently became heated, the MPD officers maintained a calm presence between the opposing groups. One OPC monitor witnessed an antiwar protester direct a racially derogatory taunt at an MPD officer who was stationed in front of the White House. The officer declined to respond and remained composed and professional. At the FBI headquarters building, an OPC monitor witnessed an MPD officer prevent an altercation between an FBI uniformed officer and a member of the public. Several demonstrators expressed to OPC's monitors that they had observed highly professional behavior on the part of police and some requested that OPC relay their impressions.

#### **B. Police Contacts with Protest Groups**

OPC's monitors observed that in the hours before the march, when demonstrators were arriving and preparing for the main rally and march, the police presence was minimal and distant. Demonstrators were allowed to gather in the Ellipse and other areas, including Pershing Park, Murrow Park, Lafayette Park, McPherson Square, Farragut Square, Franklin Square, and

Dupont Circle without any show of police presence or authority that could have had a chilling effect. As the antiwar and anti-globalization rallies and marches began, the police presence grew noticeably; nevertheless, the officers maintained an unimposing distance and stance.

Several OPC monitors observed contact between MPD officers and the leaders of organizations that had sponsored or coordinated protests. At Dupont Circle, OPC monitors observed MPD SOD officers meet with leaders of anti-globalization protest organizations, including Mobilization for Global Justice. The MPD officers assisted in devising march routes between Dupont Circle and the IMF/World Bank complex, which was the place these demonstrators were particularly interested in being seen and heard, and MPD offered and provided escorts and traffic control to assist these protesters in joining the main antiwar march as it neared the White House. One OPC monitor observed MPD SOD officers interacting with representatives of the ANSWER Coalition. The ANSWER Coalition appeared to request permission to alter the start time of the march, and this request was granted. A short time later, a different OPC monitor observed MPD officers in the vicinity of 14th Street and Constitution Avenue, N.W., interacting with antiwar protest organizers who contended that a specific portion of the route for which they sought pre-approval had been closed off by MPD. The MPD officials agreed to move their vehicles and allowed the demonstrators access to previously barricaded streets.

### **C. Permitted March**

The majority of the MPD officers that OPC's monitors observed were deployed at various points along the main antiwar march that began at the Ellipse, passed in front of the White House, and wound through the streets east of the White House to the Justice Department and back to the Ellipse. The organizers of this march had given notice and obtained approval of a march route in advance. However, OPC monitors observed the organizers request changes to the parade time and route, which MPD granted without incident.

### **D. Unpermitted Marches**

OPC's monitors observed several unpermitted marches. OPC monitors saw protesters break away from anti-globalization protesters who were marching from Dupont Circle to the IMF/World Bank complex. Other anti-globalization protesters were seen breaking away from the feeder march that joined the antiwar protesters at the White House. In each instance, the breakaway groups were permitted to march down streets that were different from those approved in advance and different from routes that had been negotiated with MPD that morning. The protesters were not arrested for parading without notice or without an approved plan. Moreover, one OPC monitor observed MPD assist a splinter group join the main antiwar march by removing MPD vehicles and allowing the group to proceed south on 15th Street, N.W., where they joined protesters as they were about to parade in front of the White House.

### **E. Dispersal Orders**

OPC's monitors did not witness any instance in which MPD officers ordered demonstrators to disperse. OPC monitors did see protesters scatter when police moved in to arrest demonstrators who had engaged in property destruction in the vicinity of 11th and K

Streets, N.W. However, police had not ordered the demonstrators to disperse. Moreover, as discussed below, police did not move in and attempt to conduct any arrests as soon as the property damage began. Rather, the officers appeared to wait until they could clearly identify specific perpetrators and until after they had obtained authorization to make arrests.

#### **F. Police Lines**

OPC did not observe any MPD officers use a police line to encircle or entrap demonstrators. OPC did, however, observe MPD officers in a line formation behind barricades in the street in front of the White House and in the street in front of the FBI headquarters building where a group of counter-protesters was stationed. The police line at the FBI building, which consisted of MPD, U.S. Park Police, and FBI uniformed officers, appeared to be there for the protection of both the counter-demonstrators and the main antiwar protesters. OPC monitors observed several heated exchanges between members of the larger demonstration and the counter-demonstrators. The police officers provided a useful buffer between the two groups. The MPD officers commendably did not react to any of the expressions of the demonstrators. At the same time, they appeared poised to prevent any violent physical exchanges between members of the opposing groups. While observing the police line in front of the FBI building, one OPC monitor saw a member of the public and an FBI uniformed officer get into an altercation that nearly became physical. Before it did, an MPD officer noticed the problem, walked over, and quietly led the federal officer back to his post on the march route, thereby averting a physical confrontation.

#### **G. Arrests**

OPC's monitors did not observe any mass arrests of protesters during Saturday's antiwar and anti-globalization demonstrations. OPC did observe the arrest of three persons who engaged in property damage near 11th and K Streets, N.W. These persons were participants in a snake march that broke off from the anti-globalization feeder march that joined the main antiwar march. It appeared to OPC's monitors that MPD officers did not move in to arrest the three individuals immediately when they began destroying property. Rather, the officers appeared to wait until they could clearly identify specific perpetrators and until after they had obtained authorization to make arrests.

#### **H. Illegal Activity**

OPC's monitors observed protesters engage in illegal activity on at least three distinct occasions. Monitors observed persons who participated in the anti-globalization demonstration spray paint and climb on dump trucks that had been employed as barricades in the area of the IMF/World Bank complex, and spray paint street signs along Connecticut Avenue, N.W. Monitors also observed participants in an anti-globalization snake march engage in property damage in the vicinity of 11 and K Streets, N.W. Members of this group knocked down newspaper boxes and trash cans and threw these and other objects into the streets. Members of this same group spray painted street signs and buildings, and broke plate glass at a construction site. OPC's monitors observed MPD officers in the vicinity when these actions occurred; however, the officers initially continued to maintain the unobtrusive distance that they had employed for the march. It appeared to OPC that as soon as property damage began occurring,

the officers should have moved in to observe more clearly who the specific non-compliant individuals were and to make arrests before the illegality escalated.

### **I. Treatment of the Media**

OPC noticed a conglomeration of media organizations under tents that were set up across Constitution Avenue from the Ellipse. We also observed individual reporters and photojournalists at various points along the antiwar and anti-globalization march routes. A Washington Post reporter even accompanied two of OPC's monitors for several hours in the early part of the day. Journalists appeared to have unfettered access to the protest activities. We did not observe any instances of MPD officers barring members of the press from any areas in which protest activities were taking place.

Although the First Amendment Assemblies Act contemplates that MPD will issue police passes to members of the media to ensure they have full access to police activity during First Amendment events, OPC understands this was not done for the demonstrations held on September 24, 2005. Instead, MPD recognized journalists' existing press credentials and MPD's Public Information Office served as a liaison between members of the media and MPD. The thrust of this effort was to provide members of the media with detailed information about where activities were expected to take place so the media could position themselves to obtain full coverage of the events.

### **J. Use of Riot Gear**

OPC's monitors did not observe any MPD officers wearing riot gear. However, monitors observed MPD officers carrying riot gear. One OPC monitor saw an MPD CDU platoon whose gas masks were strapped to their legs. However, a senior SOD officer directed these officers to remove and put away the masks. OPC's monitors did not observe any instances in which MPD officers used chemical irritants on demonstrators.

A concern voiced by one OPC observer is that it was not clear MPD officers in some locations, particularly on Pennsylvania Avenue, N.W., in front of the White House, had a way to gain ready access to riot gear in the rare event that it is needed. MPD may need to devise a way to balance its obligation not to assume a threatening and intimidating posture that chills First Amendment expression and encourages overreaction to minor unlawful activity, against the need to be prepared to handle a large scale outbreak of violent activity should it occur.

### **K. Officer Identification**

OPC's monitors observed that nearly all the MPD officers they saw were wearing their nameplates and badges. One problem noted by OPC staff was that unless a person was standing directly in front of an officer, in most cases it was not possible to see the name or badge number. MPD monitors noted that it was easier to identify from afar certain MPD officers whose names were embroidered on their shirts in large white or light blue letters. It was also easy to identify from afar MPD bicycle or motor scooter officers who wore helmets on which badge numbers were painted on in very large letters. There were a few MPD officers whose identification was not visible at all. These officers were wearing yellow-green mesh vests with bright orange



stripes. Once it began raining, OPC also observed some MPD officers in black raincoats that completely covered the officers' nametags and identification.

A related issue is that OPC monitors sometimes had difficulty distinguishing MPD officers from members of the other law enforcement officers present. This resulted from the fact that there were strong similarities between various components of their uniforms. OPC believes that MPD should consider modification to the uniforms worn by officers during protests or demonstrations that clearly identify the officers as MPD officers.

#### **L. Other Monitoring Groups**

OPC is aware that National Lawyers Guild observers monitored police handling of the demonstrations held on Saturday, September 24, 2005, and OPC sought to learn the extent to which their observations track or depart from ours, but was unsuccessful.

#### **M. Other Police Departments**

There were several other police departments interspersed with MPD officers during the protests. OPC observed U.S. Park Police officers, U.S. Secret Service Uniformed Division officers, and FBI uniformed officers. It was sometimes difficult to distinguish MPD officers from members of these other forces due to similarities in uniforms. In stark contrast to MPD, however, some members of these other forces were dressed in riot gear, and some were on horseback. OPC's monitors noted that the presence of federal officers in riot gear and on horseback seemed excessive and out of place when compared to MPD's officers, who were dressed in an authoritative yet non-threatening manner. With regard to how non-MPD officers treated demonstrators, OPC observed that although federal officers were not subject to the requirements of the Act, they followed the lead of the MPD officers. MPD was apparently able to set the tone both because its officers were deployed in greater numbers and because of its lead role in coordinating police presence for the protests.

### **VI. CONCLUSIONS AND RECOMMENDATIONS**

In light of the recent history with demonstrations in Washington, MPD's challenge with the September 2005 protests was to clearly show that the interests of public safety and the right to free expression can be effectively balanced and need not be in conflict with each other. MPD showed just that and did a thorough job of preparing for and providing police service during the antiwar and anti-globalization protests held on Saturday, September 24, 2005. It was clear that Chief Ramsey had ordered his force to take seriously the mandate of the First Amendment Rights and Police Standards Act of 2004, and it was evident that those officers charged with coordinating MPD's response to mass demonstrations, most notably MPD's Special Operations Division, had engaged in extensive efforts to revise MPD's mass demonstration procedures to comport with the requirements of the First Amendment Assemblies Act and to train and educate MPD officers in how to comply with this new law.

The District of Columbia Council also deserves commendation for enacting the new law. The environment in and around the protests that took place on September 24, 2005, stood in stark contrast to the protests of September 2002, which involved mass arrests and led to costly legal

action against the District. The difference was due in no small measure to changes in how demonstrators are thought of and treated as a result of the First Amendment Assemblies Act of 2004.

The demonstrators must also be praised. Although there were as many as, and by some estimates many more than, 150,000 people protesting in the District of Columbia at one time on September 24, 2005, the lack of any major problems, and the minimal number of arrests, was largely the result of the fact that the majority of the protesters were peaceful, nonviolent citizens who simply wished to exercise their Constitutional rights to assemble and express their views.

Furthermore, it appeared to OPC that the demonstrators were largely peaceful due in part to the fact that they were allowed to demonstrate near the objects of their protests.<sup>16</sup> The antiwar demonstrators wanted to be able to carry their message to the White House. This march represented the first time that demonstrators had been permitted to parade in front on the White House in more than a decade. To the extent MPD had a role in negotiating for permission to allow protesters to march in front of the White House, it is to be commended. Similarly, allowing the anti-globalization protesters to get near the IMF/World Bank complex, yet without disrupting the meetings, seemed an important concession to the protesters. Based on the observations of OPC's protest monitors, PCB recommends the following:

(1) MPD should continue to emphasize compliance with the First Amendment Rights and Police Standards Act of 2004. MPD should use the manner in which it handled the September 24, 2005, protests as a model for handling future large protests.

(2) MPD should devise a way to make officers' names and badge numbers more visible. With the exception of bicycle and motor scooter officers wearing helmets on which badge numbers had been affixed in large letters, it was difficult to see names and badge numbers without being immediately in front of an officer. PCB also recommends that MPD devise a way for those officers who are required to wear mesh vests, raincoats, or any other coverings to still display their name and badge numbers and that MPD consider adding some marking to its uniforms that clearly distinguishes MPD officers from other law enforcement officers.

(3) MPD should examine its street closing procedures. Although many streets were closed early, it appeared that others were permitted to remain open too close to the time the marches began. OPC recognizes this likely was done to accommodate the interest of non-demonstrators. However, the confusion that resulted as some non-demonstrators got caught in street closings near the time the parades began seemed to work to the disadvantage of non-demonstrators.

---

<sup>16</sup> There were security zones created by barricades around the White House and the IMF/World Bank complex that kept protesters from getting as close to these sites as some protesters may have wanted. *See, e.g.,* Mary M. Cheh, *Legislative Oversight of Police: Lessons Learned from an Investigation of Police Handling of Demonstrations in Washington*, 32 NOTRE DAME J. LEGIS. 1 (2005), available at <http://ssrn.com/abstract=852765> (describing security zones around protest sites as a subtle way of depriving demonstrators of their right of free expression).

(4) MPD should ensure that all of its officers, particularly non-supervisory officers, are informed of OPC's presence and role so that OPC's monitors will not be impeded in carrying out their monitoring of protest events.

(5) Both MPD and the District of Columbia Council should consider whether it is possible to achieve a better balance between the rights of demonstrators and the rights of non-demonstrators where arrests for illegal activity, particularly property damage, are concerned. If MPD can devise a way to permit officers who are near the scene of unlawful activity to move in and arrest as soon as they obtain probable cause with respect to specific individuals, it may be prudent to allow this without requiring the approval of higher ranking officials who are not present. If, however, the provisions of the First Amendment Assemblies Act that require MPD to identify specific perpetrators before conducting arrests is responsible for the delayed response to ongoing criminal activity, then the Council may wish to amend the law in a way that retains the current emphasis on respect for First Amendment expression while at the same time permitting police to interrupt illegal activity more swiftly.