

Out of Control

Seattle's Flawed Response to Protests
Against the World Trade Organization

A
Special
Report

June 2000



American Civil Liberties Union of Washington
705 Second Ave., Suite 300
Seattle, WA 98104-1799
(206) 624-2184 www.aclu-wa.org

Table of Contents

Introduction..... 3

Executive Summary..... 5

Recommendations..... 11

I. BY CREATING A “NO PROTEST ZONE,” THE CITY NEEDLESSLY VIOLATED RIGHTS TO FREEDOM OF SPEECH AND ASSEMBLY

Setting the Stage: Failure to Protect Delegates’ Rights to Assembly..... 15

Proper Security Measures: How to Protect Everyone’s Rights..... 16

The “No Protest Zone:” A Militarized Zone That Suspended Civil Liberties 18

“No Protest Zone” Not Designed for Security 22

“No Protest Zone” Not Needed to Protect Property 22

Ratification Process for Emergency Orders Flawed 23

Failure to Plan..... 24

Lack of Information Not a Problem..... 26

Intelligence Ordinance Not a Problem..... 28

Use of Inadequately Trained Forces 29

II. POLICE COMMAND STRATEGY: EXCESSIVE USE OF CHEMICAL WEAPONS AND OTHER FORCE TO CONTROL PEACEFUL CROWDS

Principles of Proportionate Force Were Ignored..... 32

Excessive Force From Excessive Fears..... 35

Overreaction in Neighborhoods Outside the “No Protest Zone” 37

Use of Chemical Weapons..... 40

| | |
|--|----|
| Use of Tear Gas..... | 41 |
| Use of Pepper Spray..... | 43 |
| Use of Rubber Bullets..... | 45 |
| Lack of Intelligible Orders to Disperse..... | 46 |
| Conflicting Orders, Confusion of Purpose | 48 |

III. ACTS OF ABUSE BY INDIVIDUAL OFFICERS

| | |
|---|----|
| Breakdown of Command and Control, Loss of Discipline..... | 50 |
| Acts of Abuse | 52 |
| Chemical Weapons Used to Attack Peaceful Citizens | 57 |
| Lack of Officer Identification | 58 |

IV. IMPROPER ARRESTS AND PROSECUTIONS; MISTREATMENT OF PEOPLE IN CUSTODY

| | |
|---|----|
| Improper Arrests and Prosecutions..... | 62 |
| Infliction of Pain on Non-threatening Arrestees | 64 |
| Threats and Assaults on People in Custody for Exercising Constitutional Rights .. | 66 |

| | |
|-------------------------|----|
| Conclusion | 68 |
|-------------------------|----|

| | |
|--------------------|----|
| Notes | 69 |
|--------------------|----|

| | |
|-----------------------|----|
| Appendix | 72 |
|-----------------------|----|

- A. Map: State of Emergency Boundaries
- B. Map: “No Protest Zone” as created by Civil Emergency Order Number 3
- C. Eugene, Oregon Police Department General Order 901.3: Oleoresin Capsicum (OC) Aerosol Spray
- D. Use of Force Guidelines
- E. Timeline

| | |
|----------------------|----|
| Sources | 73 |
|----------------------|----|

| | |
|-------------------------------|----|
| Acknowledgements | 75 |
|-------------------------------|----|

Introduction

The World Trade Organization (WTO) Ministerial Conference which began in late November, 1999 inspired one of the largest political protests ever seen in Seattle. Poorly prepared for what was likely to occur, the City of Seattle exacerbated its problems and violated civil liberties through a string of mistakes in judgement and practice.

Largely due to poor planning, City officials did not protect conference delegates' right to assemble at the opening meeting. Realizing it had lost control of the situation, the City then over-reacted. It violated free speech rights in a large part of downtown. Under the direction of the Seattle Police Department, police from Seattle and nearby jurisdictions used chemical weapons on peaceful crowds and people walking by. Losing discipline, police officers committed individual acts of brutality. Protesters were improperly arrested and mistreated in custody.

On Tuesday, November 30 – the opening day of the WTO conference – people started calling the American Civil Liberties Union of Washington office to complain about police conduct. Deluged with calls, we quickly created a web-based system to receive citizen reports about police treatment of protesters and bystanders. By Wednesday, people who had witnessed or experienced police misconduct could submit detailed reports to our web site. More than 500 people did so. We quote directly from 42 of the incident reports to convey first hand the nature, range and severity of civil liberties violations that took place in Seattle.

Civil liberties paid a dear price for poor judgment calls made by public officials and police personnel every step of the way. The City must acknowledge what went wrong and take actions to avoid similar mistakes in the future.

Executive Summary

Foreign and trade ministers from 135 nations who came to Seattle for the WTO meetings in November 1999 encountered 30,000-50,000 protesters airing environmental, labor, religious, and human rights objections to WTO policies. The strategies of protesters – well publicized for months in advance – covered a wide spectrum: major and minor marches, political theater, civil disobedience, prayer vigils, teach-ins. The protests began with a festive air – people dressed in costumes, banging on drums, dancing, chanting and singing. But the atmosphere soon turned sour.

By 8:00 a.m. on the first morning of the conference, Tuesday, November 30, some of the demonstrators blocked WTO delegates from attending their meetings. At 10:00 a.m., with crowds swelling in the streets, police began to deploy chemical weapons, rubber bullets and clubs against peaceful protesters and bystanders alike. When these actions failed to clear downtown streets and intersections – and after a few dozen individuals vandalized downtown businesses while police stood by – the Mayor of Seattle declared a civil emergency. That declaration and the ensuing police activity throughout the week brought unwarranted restrictions and outright assaults on citizens and on their basic American rights.

Many people expressed surprise that the WTO, an international organization based in Geneva which sets trade rules and settles trade disputes, could evoke such strong and well-organized opposition. Yet there was both ample reason to expect large-scale protest and ample information about the tactics that various protest groups would employ to make their political statements. The WTO conference in Geneva the previous year had seen numerous arrests as police clashed with protesters. Weeks before the conference, the *London Times* and *Seattle Times* ran articles on groups planning massive protests. The *New York Times* reported on October 13 that, “[t]hree hundred groups are vowing to bring 50,000 people or more to downtown Seattle to picket, demonstrate, hold teach-ins and cause general disruption . . . that could turn the city’s streets into a carnival of protest and, perhaps, a morass of gridlock.”

Lack of Preparation, Overreaction

While Seattle officials could not know for certain what would happen on the streets during the conference, there had been plenty of discussion about what *might* happen. The City had both reason and opportunity to prepare appropriately for the range of possible situations, but it simply did not.

The Seattle Police Department, which was in charge of conference security, did not establish an effective security plan. Police officers did not receive adequate training for the operation at hand. As the conference approached, police leadership did not allow sufficient time to establish positions on the street and did not assign enough forces to do the job. Once the action began, the Department did not give officers on the line enough rest, bathroom breaks and food, and did not issue coherent orders.

Rank-and-file officers were responsible for carrying out strategies that were ill-conceived. The police forces on the street Tuesday morning could not get delegates to the start of the conference, resulting in the cancellation of the opening ceremony. Meanwhile, the police did not take action to stop and apprehend the few dozen individuals who vandalized downtown buildings.

Failures in anticipating the event do not excuse the violations of civil liberties that took place as the event unfolded. For any event that is expected to draw significant protest, the City has the duty both to accommodate lawful protest activities *and* to protect access to the event for delegates, press, and other attendees. City officials started out with the right idea – allowing demonstrators to be close to the targets of their protest – but they executed it badly. Their security plan led them to ignore the rights of delegates as well as the City's legitimate security obligations. Having under-prepared, the City then over-reacted.

By Creating a “No Protest Zone,” the City Violated Rights of Free Speech and Assembly

For several days, it was illegal publicly to express anti-WTO opinions in a large section of downtown Seattle.

With police unable to control the movement of protesters, and concerned over the conference’s disruption and the imminent arrival of President Clinton, the Mayor declared a civil emergency and issued an order establishing a 25-square-block “limited curfew zone” or “no protest zone” in the heart of downtown. The area was essentially a militarized zone, with entry controlled by police and barred to people expressing views critical of the WTO. The suppression of free speech was not needed to protect security, nor could the “no protest zone” have accomplished that aim.

In responding as it did to the WTO protests, the City violated fundamentals of our free society which require that any governmental restriction on speech be as narrow as possible to accomplish its legitimate purpose and be “content-neutral” – that is, not favoring any particular view. The City ignored both these principles.

Though the Mayor and other officials have insisted that the City did not unduly restrict constitutional freedoms in downtown Seattle, this assurance does not square with people’s actual experiences on the street. Scores of citizens reported being prevented by police from engaging in peaceful, lawful expression within the zone. Police ordered citizens to remove buttons or stickers from their clothing, confiscated signs and leaflets, and blocked citizen entry to the core of downtown

The City Council failed to take timely action to ratify or rescind the “no protest zone.” Instead, the Council ratified all of the emergency orders the following week – after the WTO conference had adjourned and the orders expired.

The implementation and enforcement of the “no protest zone” violated rights of free speech and assembly, and did so without even the possibility of providing any real security.

Police Officials Authorized Chemical Weapons and Other Inappropriate Force Against Peaceful Crowds

Policing theory recognizes that it is sometimes better to allow crowds to mill about in streets than to employ the level of force that would be needed to clear the streets. For example, if thousands of sports fans spilled into the streets to celebrate a Seattle Mariners World Series triumph, police commanders would not order the use of tear gas, pepper spray, and rubber bullets.

Despite police and media descriptions to the contrary, the protests during the WTO conference did not constitute a riot. They were noisy and disruptive, yet demonstrators were overwhelming peaceful. Not so the police.

Police commanders authorized the use of force at inappropriate times and levels, and directed it against inappropriate targets. They approved the use of tear gas, pepper spray, rubber bullets and clubs against people who were demonstrating peaceably, against demonstrators who had not received or who were trying to obey police orders, against bystanders, and to quell disturbances the police themselves had provoked. The level of force simply was not proportionate to the threat.

The Seattle Police Department used massive amounts of tear gas against crowds even when such use was not necessary to protect public safety or the safety of officers. Tear gas was used in heavily populated areas where it inevitably affected large numbers of innocent bystanders.

The Seattle Police Department used pepper spray repeatedly against nonviolent protesters who posed no threat to public safety or to the safety of officers. Police department reliance on pepper spray was misplaced. Virtually no one has published scientific research about the effects of pepper spray on human health, and no agency regulates the manufacturing process.

Rubber bullets were used against people who posed no threat. They were also used against largely nonviolent crowds and against individuals who were engaged in passive resistance or fleeing.

Acts of Abuse by Individual Officers

Beyond the bad decisions made at the command level, police discipline broke down, and rank-and-file officers engaged in acts of brutality.

Brutality was not the norm for the hundreds of officers who reported for duty, but there are widespread reports of police using excessive force against persons who posed no physical threat, were not resisting arrest, or were simply trying to leave the area. In their riot gear, officers were visually indistinguishable from one another. Lacking visible identification, some of them took advantage of their anonymity to assault protesters. And, some officers refused direct requests to provide names or badge numbers. Others tried to preserve their anonymity by targeting people carrying cameras.

Although police brutality was not limited to one area, the events in the Capitol Hill neighborhood – where police invaded a residential area and gassed, pepper-sprayed, and bullied local residents and shoppers – were particularly egregious. Police officers were not making split-second decisions in emergency situations. They were simply using their weapons on people who offended them or who merely caught their attention. Officers also used clubs, tear gas, pepper spray and rubber bullets against individual bystanders in downtown Seattle.

To date, neither the City nor any other jurisdiction involved in WTO security has acknowledged that police misconduct was more widespread than a few isolated instances. Until the problem is acknowledged, it will not be solved.

Improper Arrests and Mistreatment of People in Custody

The police made hundreds of improper arrests, detaining for days people who would never stand trial. Then, after the demonstrations were over, charges were dropped. The City Attorney doggedly pursued other charges that either were dismissed or did not lead to convictions.

Individuals arrested during the anti-WTO demonstrations were mistreated and witnessed others being mistreated by jail officers. Some of the mistreatment was directed at protesters who made demands to see their lawyer. Some officers singled out, threatened and assaulted individuals for exercising or demanding their constitutional rights. Some officers used pepper spray against non-threatening prisoners who posed no threat to officer safety.

Recommendations

Once is more than enough. Seattle, King County, and other jurisdictions involved in policing during the WTO Ministerial conference should learn from the mistakes of 1999, and they should incorporate these recommendations into their policies and planning:

In situations where there is potential for confrontation between demonstrators and others, there may be times when police need to establish corridors or security perimeters to ensure safe passage of meeting-goers. The City must ensure that it designs such security corridors and perimeters narrowly, so that they do not unduly restrict protest activities and are no larger than necessary to accomplish the specific safety aim.

The Seattle Municipal Code should be changed to require the City Council to ratify any declaration of civil emergency within 48 hours.

When a major event is to take place with a potential for large-scale demonstrations, the City should prepare an impact statement to address the resources needed for crowd management, crowd control, and the protection of civil liberties.

Law enforcement agencies in Washington should see to it that their police officers receive training on civil liberties as it relates to crowd management and crowd control.

Law enforcement agencies in Washington should suspend the use of tear gas until the presiding city or county determines that adequate studies have been conducted to prove it does not present health risks to affected individuals.

If the city or county accordingly authorizes the resumption of tear gas usage, tear gas should only be deployed in open spaces and where it will not affect large numbers of bystanders. The decision to use tear gas should be made at the command level, and only officers specifically trained in the use of tear gas may be authorized to carry or use it.

Law enforcement agencies in Washington should suspend the use of pepper spray until the presiding city or county determines that adequate studies have been conducted to prove it does not present health risks to affected individuals.

If the city or county accordingly authorizes the resumption of pepper spray usage, the following policies on the use of pepper spray should be adopted:

Pepper spray may be used only when an individual poses an immediate threat to officers or others. It may not be used to disperse a crowd. It may not be used against an individual who is fleeing or complying with orders, or against a nonviolent demonstrator passively resisting arrest. Officers using pepper spray must comply with all other manufacturer's recommendations, including that it not be used in bursts longer than one second, in repeated bursts against the same target, or at a range of less than three feet.

The Seattle City Council and other jurisdictions that were involved in WTO policing should require that their police departments develop policies and procedures for managing crowd control in ways that:

*do not unduly restrict civil liberties;
provide clear instruction on the use and continuum of force; and
provide adequate notice and time to disperse along a safe and clear dispersal route.*

All police officers must at all times be clearly and readily identifiable by name and department.

*The outermost layer worn by police personnel, including riot or rain gear, should bear easily visible identification numbers.
When outer-layer gear is issued, the department should record the name of the officer receiving each number.*

Law enforcement agencies in Washington should have mechanisms in place to properly investigate allegations of police misconduct.

King County Jail officials should investigate allegations of misconduct at the jail during the WTO protests and hold accountable any personnel found to have committed acts of misconduct.

Jail personnel must wear clearly identifiable badges or nametags at all times.

King County Jail administrators should review their policy on the use of pepper spray, restraint chairs, and other compliance techniques by jail personnel. Pepper spray should not be used on an individual in a restraint chair.

I

BY CREATING A “NO PROTEST ZONE,” THE CITY NEEDLESSLY VIOLATED RIGHTS TO FREEDOM OF SPEECH AND ASSEMBLY

Before the WTO conference began, the Mayor’s office hoped to accommodate the expected vigorous protest and high-level multi-national talks. City officials correctly recognized their duty to accommodate both lawful protest activities *and* the lawful assembly rights of delegates, press, and other attendees.

Confronted with the prospect and then the reality of massive demonstrations against the WTO, the City made choices every step of the way about how to handle the evolving situation. All too often, it simply chose wrongly.

As downtown streets became choked with several thousand demonstrators and bystanders on Tuesday morning, conference delegates could not reach their opening meeting. The City had ample intelligence indicating that protesters had been planning for months to “shut down the WTO.” Yet the City failed to protect delegates and enable the smooth running of meetings the first day. In response to its own tactical failure, the City declared a civil emergency and improperly established a 25-square-block area commonly referred to as the “no protest zone,” in which lawful protest was banned. The zone was overly broad and was not needed for security.

The Independent Preliminary Report on the City’s handling of WTO, commissioned by the Mayor and authored by three retired law enforcement officials, suggests that the City erred by taking “extraordinary steps to accommodate protesters and ensure their First Amendment rights.”

This analysis is way off the mark.

The problem was not that Seattle planned to accommodate protest. If the police had prepared properly before the demonstrators converged on Seattle, they could have found a middle ground between heavy-handedness and naively hoping for the best. Adequate site preparation and delegate transportation plans,

executed with a sufficient number of properly trained officers, could have allowed demonstrations within sight and hearing of the Washington State Convention and Trade Center while also ensuring security.

City officials have tried to excuse their poor preparation by claiming that the large number of protesters and their tactics, such as the use of cell phones and walkie-talkies to coordinate protest activities, surprised them. With cell phone usage common among the public today, and with ample information about expected protest groups and numbers, the City should not have been surprised.

The Seattle Police Department's post-WTO After Action Report claims that police were not prepared to deal with a "worst-case" scenario. But it seems questionable to characterize a large-scale protest, some broken windows and dumpster fires as a worst-case scenario. A true worst-case scenario might involve a major act of terrorism, such as the Oklahoma City bombing or the use of nerve gas or biological weapons. In fact, the police did plan for such possibilities – the Public Safety Committee's Operations Plan for conference security details plans for Explosive Detection Teams, Bomb Response Teams, Hazardous Material Teams, and Hostage Taking and Mass Fatalities plans.

The WTO protests did not even constitute a "riot," as the Seattle Police Department claimed in its After Action Report. Seattle faced large crowds of noisy people lawfully congregating in the streets, several thousand people engaging in nonviolent civil disobedience, and several dozen people committing acts of vandalism. This was the situation that Seattle was not adequately prepared to handle.

The City disregarded a host of clear predictions and warnings and failed to prepare adequately for the prospect of large-scale protests. Together, these elements set the stage for the problems that followed.

Setting the Stage: Failure to Protect Delegates' Rights to Assembly

The City's failure to protect the ability of delegates to attend the opening session of the WTO conference on the first day, Tuesday, November 30, set the stage for what happened later in the day and week. The United States Constitution protects the rights of all to travel and to peaceably assemble. The City had an obligation to make sure that delegates, as well as protesters, could move freely through the streets and peaceably assemble. It did not.

On Tuesday morning, security measures – barricades, fences, and officers – should have been in place. Instead, by the time Seattle police began attempting to secure lines around the Paramount Theatre and the Convention Center, the primary meeting sites, large groups of demonstrators had already assembled. Demonstrators in long lines linked arms to keep delegates from entering the Paramount and the Convention Center, or from leaving their hotels. Police had failed to safeguard access to the buildings' entrances and had not created corridors for safe passage *between* buildings. The opening ceremony of the WTO conference was cancelled.

Officers in command ordered police *not* to assist delegates even when they could have. As Seattle Police Department veteran Brett Smith said in an opinion column in the *Seattle Post-Intelligencer* on December 4, "We were ordered to hold our ground. It was embarrassing for me as a police officer to see a foreign delegate, three feet away from me, getting grabbed by protesters and pleading with me to do something and I had to hold my ground."

The protesters who sat in the streets to block access to the WTO conference were committing acts of civil disobedience – that is, they had chosen to take nonviolent action that breaks the law in support of their political views. From the civil rights movement to the peace movement to the anti-nuclear movement, nonviolent civil disobedience has long been a tactic of protest. A standard police response to civil disobedience is to arrest the protesters. Protesters were well aware of this possibility, and many accepted it as the price to be paid for acting on their political views.

Yet on Tuesday police took no steps to arrest protesters who prevented delegates from entering the Paramount. This set in motion a dynamic in which City officials concluded the streets

were out of their control and engendered a misguided belief that they needed to take drastic measures to regain control.

Proper Security Measures: How to Protect Everyone's Rights

The City can and should take reasonable steps to protect everyone's rights in large-scale protest situations. Security measures must be narrowly designed to achieve legitimate security goals and must not place protesters so far from the targets of protest that their message cannot be effectively conveyed.

Prior to the WTO meetings, the City failed to establish a secure way for delegates to enter the conference site. To protect delegates' rights to attend the conference, the City should have had its forces and physical barriers (the kind of barriers with signs people often see at sporting and major civic event sites) in place 24 to 48 hours *in advance*. They were not. In addition to establishing lines around the entrances to the Convention Center and Paramount Theatre, the police should have protected key approach routes and intersections.

By early Tuesday morning, police were already taking measures to reassert control of the streets because they initially left the streets up for grabs. At 6:30 a.m., several hundred demonstrators blocked traffic north of the Convention Center and 20 minutes later, demonstrators began arriving at Sixth Avenue and Pike Street and other streets surrounding the Convention Center. The City did not plan to deploy its forces until 7:30 a.m., by which time the facility was already surrounded by thousands of demonstrators.¹

Despite the large numbers of protesters outside the Paramount, the City could have protected delegates' access to the WTO's opening session. Seattle could have had additional officers of its own and from surrounding jurisdictions readily available without stationing them conspicuously on the streets. Police leadership should have figured out how many officers it needed to reinforce barricades, intersections, and other security points if nothing went wrong. It should then have increased that number sufficiently to provide periodic relief during the day, and then increased that number to provide adequate reserves, who could have been kept close by but not necessarily visible. Knowing full well that there would be civil

disobedience, police leadership should have had many more officers on duty.

The retired law enforcement officials who wrote the Mayor's Preliminary Report suggested that Seattle could have guaranteed security only by cordoning off much of downtown. That would have been impractical and prohibitively expensive – as well as unconstitutional.

People not only have a right to express their opinions, they have a right to make their expression heard and seen by the people they are trying to influence. For example, during the 1996 Republican national convention, the city of San Diego and its police planned a protest area across the street from the convention site. When the Republican National Committee tried to have demonstrators moved three blocks away, a federal judge would not allow it. The judge's decision stated that the Republicans' plan "was a desire to place the protesters as far away from the convention center as possible, *because of* the protesters' anticipated disagreement with the RNC's own speech activities." (*National Organization for Women v. City of San Diego*, No. 96-114B (LSP) (S.D. Cal. July 22, 1996)) The judge ruled that such content-based motivation for limiting speech is unconstitutional. The protests were allowed across the street and there were no problems.

The City's initial decision to keep downtown open and to let protesters get close enough to the meeting sites to be seen and heard was both pragmatic and principled. But a narrow security perimeter must be truly secure by use of adequate supplies of physical barriers and well-trained officers. The City had the right idea – allowing demonstrators to be close to the targets of their protest – but executed it badly.

Recommendation #1: In situations where there is potential for confrontation between demonstrators and others, there may be times when police need to establish corridors or security perimeters to ensure safe passage of meeting-goers. The City must ensure that it designs such security corridors and perimeters narrowly, so that they do not unduly restrict protest activities and are no larger than necessary to accomplish the specific safety aim.

The “No Protest Zone:” A Militarized Zone That Suspended Civil Liberties

The City created a militarized zone, with entry controlled by police and barred to people expressing views critical of the WTO. The Mayor and other officials have insisted that the City did not unduly restrict constitutional freedoms in downtown Seattle. The assurance that Seattle respected the First Amendment and other rights does not square with people’s actual experiences on the street.

On Tuesday, November 30 at 3:24 p.m., the Mayor issued a Proclamation of Civil Emergency and asked the Governor to send in the National Guard. In all, a series of seven emergency orders were issued throughout the week. One order established a nighttime curfew barring the general citizenry from a large swath of downtown Seattle from 7:00 p.m. on Tuesday until 7:30 a.m. the next day (Appendix A). This order was subsequently extended through the morning of Thursday, December 2.

Another order, which went into effect the second day of the conference, Wednesday, December 1, barred entry into a 25-square-block area in the downtown retail core, an area referred to variously as a “limited curfew area” and a “no protest zone” (Appendix B). The order permitted the following categories of people to enter the zone: WTO delegates and authorized personnel; owners, employees and other necessary personnel of downtown businesses; downtown residents; and emergency and public safety personnel. In other words, those whose purpose was to demonstrate were denied entry.

At a press conference Thursday, the Mayor encouraged people to shop at downtown stores, ostensibly creating another exception. The order was revised twice that week – to permit members of the press with credentials into the area and to narrow slightly its boundaries. With police relying heavily on chemical weapons as a primary means for crowd control, the City also issued an order banning the possession, sale or purchase of gas masks. This was later revised to exempt law enforcement and military personnel, and credentialed members of the press.

The City asserted on its web site that, “The term ‘no protest zone’ is a misnomer. The City established a ‘limited curfew zone’ or buffer zone around the Convention Center and nearby hotels housing WTO delegates. ...Anyone permitted in the zone could lawfully

exercise his or her First Amendment rights.”

In reality, “no protest zone” accurately describes what was created. The ACLU received numerous accounts of citizens who were prevented by police from engaging in peaceful, lawful expression within the zone. These incidents are typical:

“I was walking down the sidewalk on the west side of Fourth Avenue heading north with two other people when we encountered a line of police officers blocking the street and sidewalk. I was stopped by an officer of the Seattle police and told that I was entering a ‘no protest’ zone and could not continue while wearing the button on my jacket (it said ‘WTO’ with a red circle and slash around it). One of my companions asked if I would be allowed to continue if I put the button away. The officer replied that I would. So I took it off and we continued down the sidewalk.”

[On Wednesday, the speaker handed out photocopies of an op-ed article to pedestrians downtown. Around 1:15 p.m., heading north on Sixth Avenue at Pike Street,] *“I was approached by an officer of the SPD who told me to stop handing out leaflets . . . [and] told me I had to turn around and go south on Sixth Avenue. . . . There were other pedestrians traveling in the direction I was moving. . . . I turned around and began to walk south on Sixth Avenue as the officer had ordered. . . . [A] well-dressed man approximately 58 years old, with silver hair. . . wearing glasses and a beige camel hair top coat over a three-piece suit. . . held out his hand to me as he approached. I asked him, ‘would you like a flyer?’ and he said ‘Yes.’ . . . Upon handing the man a flyer I was tackled to the ground by a team of Seattle police officers. They stood on my arms and legs and had at least one foot on my back as they put plastic handcuffs on me. . . . The police pulled me up the steps at the edge of the Sheraton Hotel. . . . I asked if it was a crime to possess a xerox copy of a New York Times op-ed article. A group of the policemen became very angry with me and I was reminded that I was in a ‘no protest zone.’”*

In enforcement of the “no protest zone,” even copies of the Bill of Rights of the federal and Washington constitutions were confiscated:

[On Wednesday morning,] *“I made 500 copies of the First Amendment, underlining the part about the right to peaceably assemble. I was going to hand these out within the no protest zone. . . . After handing out only 5 of my 500 copies, I approached the southwest corner of the ‘no protest zone.’ There were about 10 riot police on the corner, and I smiled and handed a copy to one of them. He shouted, ‘What’s this?’ I replied, ‘I’m not protesting, I’m educating.’ He responded, ‘Not with this you’re not!’ and immediately ripped the copies I was holding away from me. I was only holding half of my copies and had the other half in a cloth sack I was holding around my arm. The riot policeman proceeded to open the sack and dig into it. I told him, ‘You need a search warrant to look in there.’ He yelled, ‘No, I don’t!’ and took the remaining copies away from me. The Seattle Police Department had just confiscated the First Amendment.”*

[Before going to work on Wednesday, the speaker] *“printed multiple copies of the free speech clause of the Washington Constitution in a large font. . . . On my way to work, at about 10. . . I stepped across to the northeast corner of the intersection of Fourth Avenue and University Street, the edge of the supposed ‘No Protest’ zone, and displayed my copy of the. . . free speech clause to the Seattle police officers who were present. They had a full opportunity to read it. The officers then tore up and seized my paper and explicitly declared that I was in a ‘No Protest’ zone and would be arrested if I did not immediately leave.”*

In the case of Victor Menotti, the police arrested a WTO conference attendee who was simply expressing his views of the conference within the zone. Menotti is employed by the International Forum on Globalization and was accredited as a non-governmental delegate to the WTO conference. On Wednesday he stood on the corner of Fifth Avenue and Pike Street talking to a small group of people about his concerns about WTO forestry policies. As an authorized participant in the WTO conference, Menotti was allowed to be in the zone according to the Mayor’s “no protest zone” order. Suddenly, without warning, police in riot gear ran across the street toward Menotti and took him away. Police did not arrest or disperse other people standing in the street listening to

him. Although his arrest report indicates he was arrested for obstructing a police officer, charges were never filed. Menotti spent one night in jail.

The U.S. Constitution permits reasonable time, place, and manner restrictions on speech, but restrictions must be narrowly tailored to address only the problem at hand. And any restrictions must be “content-neutral;” that is, they may not prohibit speech expressing some views while allowing expression of other views. Government may in some cases regulate the act of speaking but may not prohibit only the speech that its agents find offensive.

Enforcement of the “no protest zone” ignored this principle. Police singled out speech critical of the WTO, as the following incident reports received by the ACLU illustrate:

[At 7:45 a.m. on Wednesday morning the speaker was walking near the Westin Hotel with three friends. Hundreds of other pedestrians walked near them.] *“Suddenly, I was ambushed by three unknown people. My rain poncho was pulled over my head. My arms were pushed up behind my back in break-threatening position. I was pushed up against a wall and told to sit down and be quiet. . . . Finally, after thinking they had nabbed the wrong man, I demanded to be formally charged. The arresting officer said, ‘you are in an illegal area.’ I said, does that mean all of these people walking around freely are also breaking the law? The arresting officer said, ‘That’s right.’ I said, ‘so you just picked me out, ambushed me and arrested me because I’m wearing an anti-WTO pin on my hat?’ The officer responded. . . ‘exactly’ and proceeded to throw me into a paddy wagon.”*

[The speaker walked toward the “no-protest zone” Thursday morning carrying a sign that said “The Power elite are hiding behind Troops from the People that they Disregard and Screw Everyday.”] *“I started to walk. . . across Fourth Avenue when I was stopped by Seattle police and told I was not allowed across Fourth. . . . The officers on Pine told me that proceeding with my sign would make me liable to arrest. . . . While [I was] on the northwest corner of Fourth and Pike, a woman stopped by with a sign that read ‘Smiles Needed.’ She then proceeded with her sign across (east of) Fourth Avenue,*

chatted (with her sign) with police. . .and then proceeded walking into the 'No Protest Zone,' yes, with her sign."

Lacking directions from city decision-makers, officers did not know what they were supposed to do to enforce the Mayor's "no protest zone" order. The Seattle Police Department has told the ACLU it has no documents or materials that instructed officers how to enforce the order.

"No Protest Zone" Not Designed for Security

The City did not have to suppress free speech in order to protect the delegates, and the "no protest zone" had nothing to do with security. On Wednesday there was no real emergency. Having imposed a curfew the day before, the City had all night during which it could have established police lines at the meeting sites and along travel corridors. This would have been an appropriate response that would have secured access to conference facilities while preserving everyone's constitutional rights.

If one excludes protesters but lets thousands of people who claim to be workers, shoppers or residents into a security zone, as the City did, security is not really the goal. Eyewitnesses reported that people wearing suits had no trouble getting through police lines – unless they wore or carried anti-WTO slogans – while people who fit the stereotypical appearance of a protester were stopped. It is both foolish and dangerous to make assumptions about a person's security threat based simply on their apparel.

"No Protest Zone" Not Needed to Protect Property

The City did not need to exclude protesters and political speech from a 25-block area in order to prevent broken windows. The City does, of course, have a duty to protect property. As both the Mayor and Police Chief told the press on Tuesday, the sound of breaking store windows and the sight of graffiti spray-painted on some downtown stores partly inspired the decision to declare a state of emergency. Yet once the streets filled with protesters, the police hardly responded to acts of property destruction. People intending to commit acts of vandalism took advantage of the vacuum left by the City's tactical decisions and a lack of personnel.

The police had known far in advance that stores owned by large national chains, such as the Gap and Nike Town, might be targets of vandalism. Indeed, the downtown Gap store had already been attacked on November 1. The Police Chief acknowledged in a press conference on Thursday that the police expected “anarchists” (presumed to be the chief instigators of the vandalism) to be in town and expected violence. And the Police Department acknowledged in its After Action Report that it had reason to expect vandalism on Tuesday.

The police could have prevented the vandalism from occurring in the first place or at least stopped it once it began. On Monday, before the conference began, the police *were* protecting downtown store windows. The press published pictures of them lined up on the sidewalk to guard against acts of vandalism at Nike Town. On Tuesday, however, those protective lines were nowhere to be seen. As ordered, police held their formations in the street while a group of approximately 30 people smashed windows from the sidewalks. These people were not difficult to spot or to track. A KIRO-TV camera operator and reporter followed them around and filmed their exploits. Television footage showed them walking, not running, around city blocks on wide-open sidewalks, not shielded by buildings or crowds.

Police had plans to use a “flying squad” – a group of officers formed to pursue people committing acts of vandalism and other lawbreakers. But police leadership decided to reassign these officers to crowd control duty instead. While a small group of officers could have had significant impact on the vandalism, the same group redeployed could not have contributed much to crowd control efforts.

Ratification Process for Emergency Orders Flawed

Once the Mayor issued the emergency orders, the Seattle City Council had to decide to ratify them. Yet it did not vote to do so until Monday, December 6 – six full days after the initial declaration of emergency the previous Tuesday and three days after all the orders had expired. The City Council had scheduled a meeting on the emergency orders on Thursday afternoon, December 2, but abruptly cancelled it just before it began, claiming security concerns. With police officers present at and around the

downtown Municipal Building, it is unclear why the City Council chambers could not be adequately protected from whatever security breaches the Council feared.

The delayed consideration of the emergency orders calls into question the ability of the City Council to act as a legitimate check on mayoral power.

Declaring a state of civil emergency, where the ordinary rule of law is temporarily suspended, is a significant act that restricts the normal freedoms of citizens. It should not be entered into easily, and its provisions should not be ratified unless the facts determine that a true emergency exists. To that end, the law requires the City Council to ratify a mayoral declaration of civil emergency. Current statute, however, lacks the specificity essential to ensure such declarations are made for true emergency circumstances and do not contain unreasonable restrictions. The laws governing the approval of emergency declarations must be clarified to ensure a timely and fair application of emergency orders.

Recommendation #2: The Seattle Municipal Code should be changed to require the City Council to ratify any declaration of civil emergency within 48 hours.

Failure to Plan

Failures in properly anticipating the event do not excuse the violations of civil liberties that took place as the event unfolded. The City's failure to protect civil liberties stemmed in part from a chain of decisions that Seattle officials started making long before the WTO delegates came to town. Typical of this lack of preparation was the approach to protecting the delegates. According to the King County Sheriff's Office draft final report on WTO, a dignitary protection committee established by the Seattle Police Department's security planning unit met a couple of times early in the planning process, and then did not meet again. The report suggests that, "this committee had no organizational direction and was very largely ineffective at identifying and planning for Dignitary Protection needs."

Seattle may have under-prepared because it was unwilling and unable to spend the money for the security preparations required

for a major international conference. Fundraising by the Seattle Host Committee – a private consortium of business and local government leaders responsible for planning and raising money for the conference – lagged, and the federal government was reluctant to cover the shortfall. Training and additional police cost money, more money than Seattle was prepared to spend in advance. Instead, the City ended up paying later for official investigations and defense against lawsuits.

The City should have assembled enough officers to respond to a civil disturbance – which the Seattle Police’s Operations Plan for conference security called “one of the most likely threats” – and the numbers and tactics that protest groups had advertised in advance. Not only did the Police Department not solicit advance help from other agencies, it turned down offers of help. “(Major William) Dickinson [of the King County Sheriff’s Office] offered our resources each day and was rebuffed right up until the time the shit hit the fan,” said King County Sheriff’s Captain Larry Mayes in “WTO Wrap-Up” notes in the Sheriff’s Office report. “We offered 200 [officers for WTO duty],” Sheriff’s office spokesman John Urquhart told the *Seattle Post-Intelligencer*, “but they only wanted 100.”

The Seattle Police Department also did not welcome other agencies’ help in planning. The Sheriff’s Office report observes that Seattle’s “security plan ‘looked good on paper,’ but as the WTO event drew nearer, several significant issues were identified, and it became clear that the WTO event was too large and complicated to be handled by SPD alone.” Nevertheless, the Sheriff’s representative was not invited to any meeting of the Logistics Committee, which was responsible for planning relief time, food and water for the officers, or to any meeting of the SWAT Committee. The report notes that “as the planning for the WTO gained momentum, it became increasingly clear that SPD was not including other agencies in the decision-making process. The [subcommittee] meetings were not forums for discussion and collaboration, but instead, were viewed more as ‘briefings,’ in which, SPD updated affected agencies of the plans made so far.”

Recommendation #3: When a major event is to take place with a potential for large-scale demonstrations, the City should prepare an impact statement to address the resources

needed for crowd management, crowd control, and the protection of civil liberties.

Lack of Information Not a Problem

Police officials from King County and other police agencies have criticized Seattle for poor intelligence or for failing to take intelligence reports seriously. The Sheriff's Office report concluded that Seattle ignored "clear indications" that it should expect massive civil disobedience. "Though intelligence reports prior to the WTO predicted a significant level of civil unrest, it appeared that when the predictions were realized, [Seattle Police Department] commanders were unprepared or unwilling to deal with them."

It is hard to see why the City was – or claimed after the fact to be – surprised by the scope of the protests. The Direct Action Network (DAN), a major organizer of the WTO protests, had a track record of mobilizing people to engage in civil disobedience in environmental protests in California. DAN and others mobilizing for the protest were quite open in advertising their intentions. A message posted on the Internet on September 6, 1999 proclaimed:

"Tens of thousands of people will converge on Seattle and transform it into a festival of resistance. . . . We are planning a large scale, well organized, high visibility action to SHUT DOWN the World Trade Organization on Tuesday November 30."

The City should not have been surprised when demonstrators linked arms inside pipes to keep police from separating them or applying pain holds to their arms or wrists. Protesters against redwood logging had done exactly the same thing in a widely publicized demonstration less than three years earlier. A *Los Angeles Times* article describing the 1997 demonstration at Pacific Lumber's Scotia, California headquarters noted that seated protesters linked arms through metal tubes which prevented officers from applying pressure and pain to separate them. As one protester engaged in civil disobedience during the WTO conference reported,

[At noon on Tuesday in front of One Union Square, I was] *"in a group of about five people linking arms on the sidewalk. We were being very friendly to those who we weren't letting get past us. . . . As an organizer with the Direct Action Network I personally know that we had told*

the Seattle Police Department that this is what we had planned.”

DAN brought hundreds of people to Seattle to “Shut down the WTO.” DAN’s tactics and preparations were far from secret; weeks before the WTO met, DAN distributed a four-page newspaper that detailed plans for protest activities before and during the week of the conference. The paper also directed readers to web sites with further details about protest sites, times, and strategies. It stated clearly that DAN would organize by 7:00 a.m. on Tuesday morning, when “We will nonviolently and creatively block [the WTO] from meeting.”

The Seattle Police After Action Report concludes that “SPD commanders put their faith in historical precedent – the Seattle tradition of peaceful protest – in assessing the needs for policing the WTO event. . . . [W]e relied on our knowledge of past demonstrations, concluding that the ‘worst case’ would not occur here.” This statement contains a number of false assumptions. The fact is that most protest against the WTO indeed was peaceful, albeit disruptive. Acts of vandalism were committed by relatively few people and were far from the norm for the protests. Nor was Seattle a stranger to confrontational protest. Five years earlier, for example, Seattle police had donned riot gear and used pepper spray and tear gas to break up a demonstration of homeless youths on Broadway Avenue in the Capitol Hill neighborhood. Besides, any supposed “Seattle tradition” was presumably unknown to the thousands of protesters expected from around the country.

City officials had met for months with representatives of some protest groups to plan and, to some extent, choreograph the week’s events. City officials have claimed they were misled by the protest group representatives with whom they had negotiated in advance. But those representatives – to say nothing of past history and common sense – had made it clear that they could not possibly speak for all the disparate groups that might show up in Seattle. Many of the protesters were expected to participate in decentralized, independent “affinity groups.” If City officials believed that they had made a deal with representatives of all the potential protesters, that belief was not rational. This was not a labor negotiation or a business deal. A handful of insiders in a City meeting room could not speak for thousands of outsiders on the city streets.

Intel l i g e n c e O r d i n a n c e N o t a P r o b l e m

The After Action Report and the Mayor's Preliminary Report both make the misleading claim that the police were handicapped by Seattle's Police Investigations Ordinance. In so doing, they are using the ordinance as a rationale for the City's failure to acknowledge the obvious.

The law bars police from spying on and infiltrating groups based on their political views and requires a civilian auditor to review any political information that they do collect. It explicitly provides that police can investigate individuals or political organizations when there is a credible belief they are engaged in criminal activity. It makes special provisions for the need to protect dignitaries. Passed in 1979, the ordinance was sparked by revelations of secret police intelligence files on hundreds of Seattle citizens and political groups – all compiled without any evidence of criminal activity.

One hardly needed undercover methods to learn that protest groups hoped to have 50,000 people in Seattle, and some of them hoped to shut the city down. The groups talked freely about these goals. To find out what the protesters hoped to accomplish, one needed only to read a newspaper. In September, 1999 the *Seattle Times* ran a feature article on protest training exercises that were being held by the Ruckus Society, a group that provides training in civil disobedience skills for human rights and environmental organizations. A *Seattle Weekly* article that month profiled anarchists from Eugene, Oregon, including a discussion of their philosophical embrace of property destruction, and predicted their attendance at WTO. The *London Times* carried a front-page story about a European group coming to Seattle to protest aggressively. A *Seattle Times* article on September 10 hit the mark a full ten weeks before the protests hit Seattle:

“When World Trade Organization negotiators from more than 130 countries arrive in Seattle in November, they will be greeted by giant puppets, street dancers, anarchists, activists dangling from skyscrapers and a mass of protesting steelworkers and Teamsters. Here, in one of the most trade-friendly spots in the nation, thousands of demonstrators are expected to take to the streets around the Washington State Convention and Trade Center on Nov. 30 in what is likely to be the biggest protest in America against the globalization of commerce. The goal of

opposition organizers was bluntly stated in a recent e-mail circulated among protest organizers: 'SHUT DOWN THE WTO TUES NOV. 30.'"

The police in fact had access to intelligence information provided by other agencies, as well as a great deal of information published in the press about the prospects of disruptive protests and about a group of anarchists based in Eugene, Oregon who advocate property destruction as a political tactic. Minutes of a WTO planning subcommittee meeting dated September 13 state that "[i]f we have read the paper, we are up to speed." The Police Investigations Ordinance was not the obstacle to proper planning.

Use of Inadequately Trained Forces

The conduct of officers and police command decisions made in response to WTO protests indicate a lack of adequate training. The need for extensive training to handle large-scale protests should have been obvious. The International Association of Chiefs of Police (IACP), an international membership organization of police executives, sets voluntary standards for police performance and conduct and produces training materials for police agencies. Its *Training Key #426 – Confronting Civil Disturbances* advises, "Special emphasis must be placed on training of law enforcement officers to confront civil disturbances. . . . Many agencies are unwilling or seemingly incapable of expending the time, energy, resources and money to conduct such training."

Seattle learned it would be hosting the conference in late January. Yet in response to an ACLU inquiry, the Assistant Seattle Police Chief said on October 14, 1999, just six weeks before the conference opened, "We have not produced or distributed any WTO specific training materials." The Seattle Police Department changed its Demonstration Management Committee leader four times, reducing the committee's effectiveness and cutting the lead time for training.²

When the conference arrived, some police on the front lines were ill-trained for duty at WTO. As two officers told the media,

"No one really feels ready. Many of us are hoping to God that we don't get sent down,' one SPD sergeant (who wished to remain anonymous) told The Stranger."

The Stranger, November 25, 1999

“We were trained at the last minute, more or less. We would have liked to have more training.”

Seattle police officer Chris Shean on *KIRO-TV*

Our research and the report of a city consultant indicate that the police as a group were as ill-prepared as some officers evidently felt, and that their training had been seriously inadequate. Any officer assigned to crowd control duty during the WTO conference should have been specifically trained for at least a week. Los Angeles County Sheriff’s Department Captain Richard Odenthal, an expert on riot control who Seattle hired as a training consultant to prepare its officers for the WTO, wrote critically in his own post-WTO conference assessment that most officers had only 8 to 16 hours of basic crowd-control training before the conference. Leaders had virtually no experience in responding to civil disturbances and only limited classroom training.³

According to the Washington State Criminal Justice Training Commission, all new police officers in the state receive basic training on containing disturbances, which involves primarily small-scale incidents and not large-scale civil disturbances. (Some officers undergo an advanced police training referred to as basic riot school, a 24-hour training spread out over three days.)

The many police officers called to duty from outside Seattle needed training in responding to protest. If the City had thought it might need to call on outside forces, as it eventually did, it should have brought them in months before for joint training. In its document, “Areas of Concern in Addressing Contemporary Civil Disorders,” the IACP stresses the need to “[p]ractice coordination with other agencies, including the National Guard and active military, in preparation for major joint duty.” The City did not follow that advice.

The following discussion recorded on police dispatch tapes from Wednesday illustrates the need for training so that officers understand their duty during demonstrations. At 7:56 a.m., an officer radios: “Heads up FYI we are having some legal observers probing our lines, taking notes on our posts. So if any officer around the Convention Center sees these folks, wearing green, legal observers – they’re taking notes. Take the notes from them

and get ‘em outta here.” Twenty-five minutes later, the police radio broadcasts a clarification: “Information for units, per Chief Pirak, he does not want papers taken from the protesters. We cannot take papers from the protesters.” The first speaker’s apparent lack of knowledge about free speech rights is alarming. Officers responsible for enforcing a multi-block perimeter filled with demonstrators should have had a clear understanding of those rights from the beginning of their mission.

Recommendation #4: Law enforcement agencies in Washington should see to it that their police officers receive training on civil liberties as it relates to crowd management and crowd control.

II

POLICE COMMAND STRATEGY: EXCESSIVE USE OF CHEMICAL WEAPONS AND OTHER FORCE TO CONTROL PEACEFUL CROWDS

Democracy is not always neat and orderly. Sometimes people march and demonstrate. The WTO protests were noisy and disruptive, but overwhelmingly peaceful. Police – unclear about their mission, goals and objectives – used levels of force that were inappropriate.

The “continuum of force” principle requires that force be proportionate to the threat to which it responds. The need for police to use one level of force does not provide blanket justification to use all levels of force. The choice of police tactics depends on the targets of force and the actions in which they are engaged. Repeatedly, tactics chosen by police during the WTO conference were not proportionate to the threat or lack thereof.

During the WTO conference, police actions affected several groups of citizens: tens of thousands of lawfully-congregated marchers; several thousand people who committed nonviolent acts of civil disobedience by sitting down on streets and sidewalks; bystanders who milled about in the streets; several dozen people who committed acts of vandalism; and office workers, shoppers, and neighborhood residents who did not participate in the protests.

Principles of Proportionate Force Were Ignored

Police decisions during the WTO conference did not adequately distinguish between the groups of people involved and the level of threat – or lack of threat – they posed.

1) Tens of thousands of lawfully-congregated marchers: In the months prior to WTO, representatives of the ACLU and other citizen organizations met with police and city officials to discuss concerns about the upcoming protests. The City acknowledged that protesters should be able to express their views within sight and hearing of their targets. The City followed through on its commitment to allow lawful protest, as a union-led rally and march

involving tens of thousands of people took place without incident on Tuesday. Also, the City properly did not (as have officials in some other cities) force demonstrators into “protest pens” or designated areas for protest far from the site of WTO meetings. The City’s subsequent creation of a “no protest zone” overshadowed its previous support for lawful protest.

2) Several thousand people who committed nonviolent acts of civil disobedience by sitting down on streets and sidewalks: The City had a legitimate goal in providing access to the conference for delegates on Tuesday morning. Police should have achieved this by securing routes of entry to the conference facility in advance and, if necessary, by arresting people who blocked entry. Having failed to take either approach, the City on Tuesday afternoon decided to clear away the masses of people in the streets downtown. There was no need to move against these nonviolent crowds. They posed no threat.

Once the City decided to take this action, police should have used only as much force as they needed to accomplish their goal. Using tear gas, pepper spray, or rubber bullets may be justified as a last resort when there is a threat to public safety or the safety of officers. But such weapons should not be used against nonviolent crowds.

3) Bystanders who milled about in the streets: When there are very large gatherings of people, law enforcement personnel frequently tolerate behavior that violates a law. Police recognize that it is sometimes better to let crowds mill about in the streets than to employ the level of force that would be needed to clear the streets. For example, if thousands of sports fans spilled into the streets to celebrate a Seattle Mariners World Series triumph, they would not be the targets of tear gas, pepper spray, or rubber bullets. In such cases, transportation corridors for emergency vehicles can be established along key arterials while citizens are allowed to congregate on other streets. This is appropriate action.

Use of tear gas, pepper spray, or rubber bullets may be justified when there is a threat to public safety or the safety of officers, but such weapons should not be used simply to move a crowd. During the WTO protests, the City made decisions to clear downtown streets well away from the conference facility and streets in the Capitol Hill neighborhood. The City did not do this to protect any person or thing from physical harm, but rather to pursue the ill-

defined goal of gaining control of the streets. The use of chemical and other weapons was therefore unjustified.

4) Several dozen people who committed acts of vandalism: Relatively few individuals among the thousands of people who participated in the WTO protests committed acts of property destruction. Use of force against crowds of nonviolent people was not an appropriate response to isolated acts of vandalism. Acts of vandalism should be dealt with by arresting the people who commit them.

5) Office workers, shoppers, and neighborhood residents who did not participate in the protests: In considering what level of force to use in enforcing the law, police must take into account the impact on innocent bystanders. During the WTO conference, police used chemical weapons in areas heavily populated with people not involved in protest activities. As a result, thousands of office workers, shoppers, and neighborhood residents were hit with tear gas and pepper spray.

The ACLU received numerous reports of police using inappropriate levels of force in a variety of circumstances. One such widely-reported circumstance involved assaults on nonviolent protesters sitting in the streets:

[At Eighth Avenue and Seneca Street around noon on Tuesday, the speaker witnessed her friends and many others] “. . .sitting down in a peaceful protest when the police. . .advanced on the people, ripped off their gas masks and [sprayed] them point blank in the face over and over again. [The police] were also ruthlessly beating them in the back with their nightsticks repeatedly.”

[At 10:00 a.m. Tuesday around Sixth Avenue and Union Street,] “I was sitting in the street, peacefully blocking the street with about 40 other people. . . . All of a sudden, the police tried to push their way through a crowd of people who were standing on the other side of the intersection. When the people didn’t move immediately, the officers took out their billy clubs and beat people to the ground. . . . [T]he police walked behind those of us sitting on the ground and point blank [pepper-sprayed] us. They immediately started bean bag shooting people at point blank

range. . . Simultaneously with this, other officers were shooting off cans of tear gas.”

These tactics were unnecessary and shameful. Our elected officials have a duty to ensure that police policies and practices for the use of force against citizens are appropriate. Important considerations involve both the *amount* of force that is used and the *circumstances* in which force is used. Seattle Police Department policies and the conduct of police during WTO failed to make reasonable judgements as to when, why, and what type of force should be used.⁴

Excessive Force From Excessive Fears

Outnumbered, knowing they had no backup, and facing demonstrators who in some cases were confrontational, some officers may have felt a sense of danger. But the record indicates that the actual danger was minimal. With perhaps 50,000 demonstrators in downtown streets on Tuesday and hundreds on Capitol Hill Tuesday and Wednesday nights, as far as the ACLU has learned, there is no record of a single firearm being taken from a demonstrator by police. Despite the overwhelming numbers of demonstrators, the tense atmosphere and verbal taunts, there is no record of any officer being seriously injured by a demonstrator during the entire week.

In fact, according to Seattle’s After Action Report, of the 56 officers who reported injuries, many were hurt by the crowd-control devices they were using to disperse demonstrators. Deafening concussion grenade explosions, stinging clouds of tear gas, and pain-inducing bursts of pepper spray were a major cause of injuries. Seventeen officers reported hearing loss, four listed exposure to chemical irritants, one was burned by a hot tear gas canister, and another claimed a snug-fitting gas mask broke his teeth. A dozen complained of strained backs, hurt hands and sprained knees from handling protesters.

Only fifteen officers said they were struck by bottles or other objects thrown at them or injured while scuffling with protesters. That is fifteen too many, but given the size and scope of the protests, it does not indicate a pattern of officers in serious physical

danger or officers forced by circumstances to employ Draconian methods.

The police certainly were responsible for public safety and understandably were concerned about their own safety. But they also seem to have been operating in a vacuum of training and communication that permitted fears to multiply far beyond what was warranted by the reality of situations. This created a climate in which police felt a need to respond with heavy-handed tactics.

For example, on Wednesday morning an officer near Denny Park, outside of the “no protest zone,” radioed, “Be advised, some of the signs that were taken off the protesters have two to three inch finishing nails. . .through the. . .1 by 1 ½ . . .wood. . . . So, they are weapons.” Picket signs are a staple of demonstrations. While a piece of wood with nails sticking out can be used as a weapon, those signs were more likely the result of hasty carpentry rather than violent intent.

Isolated threats by individuals should not provoke use of force against an entire crowd, as happened on Capitol Hill. The proper response is to subdue and/or arrest the individuals involved in the threatening behavior. On Capitol Hill shortly before 10:00 p.m. on Wednesday night, according to the police After Action Report, “an officer reported seeing someone carrying a Molotov cocktail.” The report does not say that anyone else confirmed the sighting, or that the person reportedly seen carrying the weapon was arrested. There is certainly no innocent explanation for a Molotov cocktail. But a single person carrying one did not mean that the officers faced a menacing crowd, much less a whole menacing neighborhood, as suggested by their response.

In addition, the City should have considered the danger of escalating the confrontation by the use of heavy-handed tactics. Using tear gas, pepper spray, or rubber bullets to clear the streets inevitably raises the level of tension. The issue for many protesters and bystanders then becomes the action of police themselves, rather than the original cause of protest. And the confrontation resulting from the increased level of force attracts people who would not otherwise be in the streets. The following reports received by the ACLU illustrate the escalating effect of overreaction:

[Around 9:30 p.m. Wednesday on Capitol Hill, the speaker heard explosions and yelling coming from the area around Seattle Central Community College. He went in that direction to see what was happening and saw people being chased by police.]

“The great majority of the people that ran down the street to escape the gas and the charging officers were quite obviously people like myself who had no part in the protest, but had been drawn to the scene by the commotion. . . . [T]here were a few noticeable ‘protesters’ out, but. . . a growing number of residents of the neighborhood [were] gathering in the street, all of them angry at this invasion.”

[On Capitol Hill around the same time on Wednesday,] *“My impression was that most people there, like myself, had come out to see why explosions were occurring in their neighborhood.”*

Overreaction in Neighborhoods Outside the “No Protest Zone”

The police response to people in the streets on Capitol Hill Wednesday night was a prime example of overreaction. Police invaded a residential neighborhood and gassed, pepper-sprayed, and bullied local shoppers and pedestrians. Officers were not making split-second decisions in emergency situations; their targets posed no threat. The following incidents are typical of those reported to the ACLU:

[Around 9:15 p.m. Wednesday,] *“My girlfriend and I left the Broadway Grill after a late dinner and walked about half a block south to the next corner. There we met a line of police in riot gear. We raised our hands and my girlfriend said our truck was parked a few blocks behind them on Pine. One of the officers yelled ‘Get the fuck out of here,’ and we turned around and started to leave when they fired tear gas at us, hitting my girlfriend in the foot.”*

[Around midnight Wednesday at Tenth Avenue and Pine Street,] *“The police began to shoot tear gas at local residents. . . without warning. . . . I was walking on the sidewalk away from the police line and was hit from behind by a tear gas canister in the ankle. I went to the hospital the next day to find out my ankle [was] broken.”*

[The speaker was videotaping the scene at Eleventh Avenue and Pine Street very early Thursday morning.] *“Protesters began singing Christmas carols and TV show themes. I remained on the sidewalk. . . without warning. . . police (at about 2 a.m.) began spraying pepper gas into the crowd and throwing stun grenades. . . . Two stun grenades exploded near my face and left hand. . . Two people saw me bleeding and took me to the hospital (Harborview) where I stayed for five hours and was treated for lacerations on my forehead and two fingers and two fractured finger bones.”*

In its After Action Report, the Seattle Police Department says that while a platoon commander was trying to leave the area, “[s]ome from the crowd jumped on his car and began rocking it by the light bar while others lay in front of the patrol vehicle, preventing it from moving as he was besieged by the crowd. Chemical irritants were deployed to break up the riotous group.” A city log of that night’s events refers to a police lieutenant trapped in his car by “the mob,” which rocked the car and clearly intended to turn it over. This description may suggest that police thought they were under siege.

But participants and onlookers present a strikingly different account of the same incident. According to several eyewitness reports received by the ACLU, the crowd turned hostile only after an officer drove straight into a mass of people. The following is one incident describing the event that kicked off what has been referred to as “the Battle of Capitol Hill.”

[The speaker had joined a group marching south on Broadway Avenue. He reported that the crowd was peaceful and happy.] *“Some people driving down Broadway would honk and smile, although the occasional person would honk and swear. People were walking along in the street, talking, laughing and having a good time.” [Near Pine Street,] “a Seattle police SUV turned its red-and-blue lights on, pulled up again, slowed down, then sped up and drove into the crowd at what I estimated to be 10 to 15 miles per hour.” [The vehicle stopped in the crowd. Then riot police arrived in Vanpool vans and started tear gassing people.]*

Then-King County Councilmember Brian Derdowski spent four hours on Capitol Hill that night witnessing the activity and acting as an unofficial negotiator between the crowds and the police. In accordance with the above account, he told the ACLU, “I heard from several sources that the police were going around in vans, approaching groups of demonstrators and residents, jumping out of vehicles, using tear gas and rubber bullets on people, then jumping back into the vehicles and driving away. This story was repeated several times. . . .”

The After Action Report also claims that “radio dispatchers received information from an employee at the Broadway Chevron Station that people had taken over the station, and were attempting to fill small bottles with gasoline.” That statement is an exaggeration of the Seattle Police Department’s own dispatch tapes.

The tapes indicate there was not much of a crowd at the gas station. At 11:52 p.m., a police dispatcher told all units on Broadway Avenue that “at the Chevron station, callers [are] advising that there are about 200 protesters there and they’re trying to get gas from the pumps. Station is open.” Three minutes later, an officer reported that “there’s only about seven people standing around the outside of the Chevron station.” Two minutes after that, a second dispatcher announced, “Both the Texaco and the Chevron stations have shut off their pumps for the evening.” The incident ended quickly. There is no indication that any officer tried to confiscate bottles of gasoline – if indeed there were any bottles – or make any arrests.

The After Action Report attempts to put a positive spin on some of the police actions. It reports, for example, that “[t]he East Precinct remained under siege until 0250 hours. In order to disperse the rioters, use of chemical irritants and less lethal munitions was required.” But witnesses tell a far different story.

According to a *Seattle Weekly* reporter who was on the scene in the early morning, the “rioters” consisted largely of the people sitting in Pine Street singing songs. At 1:40 a.m., “They begin singing, earnestly: the theme from the Brady Bunch, then ‘Kumbaya,’ and finally ‘Silent Night,’” wrote the *Weekly’s* Eric Scigliano. “The chorus swells all along the block.” These people posed no physical threat, and their presence created no emergency, but, five minutes after the singing broke out, Scigliano observed, “With no audible

warning, the loudest blast I've heard all week sounds, and a heavy volley of plastic bullets, flash grenades, and gas shells clears Pine Street again."

Brian Derdowski's recollections are nearly identical. He told the ACLU, "most people were very calm and friendly. . .the crowd was singing 'Silent Night,' and suddenly I was hit in the back with a tear gas canister or something. . .there was an enormous outpouring of gas and smoke and noise, and the police moved in formation toward the remnants of the demonstrators. . . . By the time the final assault by the police began, I had heard no warnings of any kind for over two hours."

Derdowski's summary of his experiences on Capitol Hill verifies the numerous accounts the ACLU received, indicating that it was the police – not a riotous mob of protesters – who lost control of themselves and terrorized citizens that night. He states:

"In summary, the crowd that night at Broadway and Pine, and on 11th St. was mostly calm, and entirely non-violent I did not witness a single incident of violence or property destruction. . . . Any attempt to escalate by one or more of the 'hot-heads' was met with action by citizens rolling the situation back, including a citizen's arrest of a person who was seen committing vandalism. . . . During the approximate four-hour period that I was there, the situation gradually became less tense. . . . Much of the anger of the crowd was directed to the alleged earlier actions of the police on Capitol Hill. The final assault by the police came with no warning, and was over-kill, as the crowd had greatly diminished."

Use of Chemical Weapons

Groups of officers used chemical weapons repeatedly in areas with large numbers of bystanders, including downtown workers on their way home and residents of the Capitol Hill neighborhood. Sometimes chemical weapons were aimed deliberately at people who were not demonstrating or breaking any laws:

[The speaker was leaving work near Third Avenue and Stewart Street around 6:00 p.m. Tuesday.] *"The group I was with, approximately 12 to 15 people, was the*

first out; although we had just exited our place of work, the line of riot police. . .fired several (three to four) tear gas canisters at us, one of which landed no more than five feet away from me. The group was on the sidewalk and had no information regarding the appropriate direction to take. . . or exactly what was expected of us. . . . It was literally three seconds after leaving our building that we were gassed without warning or provocation.”

[The speaker observed events near the Pike Place Market on Wednesday afternoon.] *“To my amazement the police fired numerous gas canisters and shells within 20-30 feet of the market, engulfing a UPS delivery man, the market security officer, with gas wafting over to the fish stall at the entrance to the market. (The employees at the fish market immediately packed away all fish to avoid contamination.)”*

[The speaker was trying to leave her downtown workplace on Wednesday and get home.] *“When I attempted to get into the bus tunnel at Westlake I was blocked and pushed. . .by the police. . . . I was forced down toward Second Avenue and could not get through the police anyway. I was sprayed with [pepper spray]. . . . The officers seemed to be enjoying themselves.”*

[The speaker, a member of the press, witnessed peaceful protesters engaging in civil disobedience at Sixth Avenue and Union Street around 10:00 a.m. on Tuesday.] *“Without provocation, the police sprayed excessive amounts of tear gas and then let off larger charges of tear gas. I witnessed protesters, media, trade delegates, and bystanders be completely incapacitated by the gas and they had to be dragged to safety by other bystanders.”*

When the City banned the possession of gas masks, it kept non-protesters and innocent bystanders – including people whose age or physical condition made them especially vulnerable – from protecting themselves against tear gas or pepper spray. Adding insult to injury, the ban on gas masks was not accompanied by efforts to ensure that chemical weapons, which are easily blown by the wind, reached only their intended targets.

Use of Tear Gas

During the WTO conference, police used large amounts of tear gas to disperse crowds. In addition, the ACLU received reports from citizens that officers threw “smoke bombs” directly into the storefronts of businesses on Capitol Hill. Other citizens reported that tear gas wafted into the homes and apartments of residents. Its use often served no strategic purpose, and its effects reached well beyond its intended targets. State Patrol Chief Annette Sandberg observed critically that police officers at times engaged in pointless “gas and run” tactics.

The Seattle Police Department told the ACLU that it used two types of tear gas agents – CS (o-chlorobenzylidenemalononitrile) and CN (1-chloroacetophenone). These chemical agents have been widely used by the military and police. CN is generally acknowledged to be more toxic and to cause more serious effects than CS. For both agents, first aid procedures require fresh air and flushing eyes with water.

Tear gas is intended to cause discomfort. On contact, tear gas can cause: burning and involuntary closing of the eye, tearing, temporary blindness, burning of the skin, gagging, vomiting, sneezing, coughing, tightness in the chest, irritation of the throat and lungs, burning of the mucous membranes of the nose and mouth, salivation, and diarrhea. Tear gas may also exacerbate the symptoms of people with lung disease, asthma or emphysema.

During the WTO conference, police used massive amounts of tear gas in heavily populated areas where it inevitably affected large numbers of bystanders and without adequate rationale. Given its effect on health, we reject its use for most crowd control and believe it should be further evaluated before used at all.

Recommendation #5: Law enforcement agencies in Washington should suspend the use of tear gas until the presiding city or county determines that adequate studies have been conducted to prove it does not present health risks to affected individuals.

Recommendation #6: If the city or county accordingly authorizes the resumption of tear gas usage, tear gas should

only be deployed in open spaces and where it will not affect large numbers of bystanders. The decision to use tear gas should be made at the command level, and only officers specifically trained in the use of tear gas may be authorized to carry or use it.

Use of Pepper Spray

Oleoresin capsicum (OC), the foundation of pepper spray, comes from a naturally occurring, oil-based substance found in cayenne and other varieties of pepper plants. It is combined with other substances, either an alcohol-based carrier or non-alcohol-based carrier, to atomize it into a fine spray. The effectiveness of the spray depends on its strength, which is usually from five to ten percent for law enforcement uses. OC works by causing an almost immediate burning sensation of the skin, and tearing and swelling of the eyes, causing them to close involuntarily. When inhaled, it inflames the respiratory tract and restricts breathing.

Police agencies' reliance on pepper spray is tainted by the lack of scientific research on its effects. Pepper spray has not been sufficiently monitored, tested, or regulated by any government agency to determine its effectiveness or toxicity. The few studies that have been conducted on pepper spray and its components show that it has damaging short-term and long-term effects on bodily functions, particularly in people with preexisting medical problems, in children, and in those with respiratory conditions such as asthma.

Nevertheless, pepper spray has become an increasingly popular weapon. Due to the lack of regulatory oversight, police agencies currently base their guidelines for the use of pepper spray on manufacturers' claims.

Seattle police used pepper spray manufactured by Defense Technology Corporation of America (Def-Tech) in Casper, Wyoming. Def-Tech advises against using pepper spray at a distance of less than three feet. It also advises using only a single one-second burst. Eyewitness reports and television news coverage indicate that Seattle police routinely ignored the manufacturer's advice by spraying at close range and in steady streams.

Pepper spray should be used only in limited circumstances. The Seattle Police Department's procedures for "Use of Chemical Agents in Civil Disobedience, Crowd or Riot Situations Involving Unlawful Activity" state:

"The authorized use of chemical agents during civil disobedience, crowd, or riot situations involving unlawful

activity shall have as a primary objective one of the following:

(1) Prevention of violence.

(2) Suppression and dispersal of unlawful assemblies with minimum hazard to the public and law enforcement.

(3) To aid in the overcoming of either passive or aggressive resistance to affect arrest.⁵

(4) Area or building deprivation to prevent further destruction of property when other means are not practical.

These devices shall only be deployed subsequent to a verbal dispersal or movement order.”

These criteria are flawed, and the police did not even follow them.

In Eugene, Oregon, site of civil disturbances in the past year, police have changed their policy for the use of pepper spray. It can now be used only to immobilize people who pose threats to themselves, officers, or third parties. It may not be used simply because an officer thinks it is necessary, may not be used to disperse a crowd, and may not be used repeatedly against a single person (Appendix C).

The U.S. Ninth Circuit Court of Appeals ruled in May, 2000 that the use of pepper spray against nonviolent protesters in some circumstances is an unconstitutional “unreasonable use of force.” (*Headwaters Forest Defense v. County of Humboldt*, 211 F.3d 1121 (9th Cir. 2000)) The ruling stemmed from a 1997 incident in Humboldt County, California in which sheriff’s deputies swabbed pepper spray in the eyes of environmental protesters. “The evidence suggests the protesters suffered excruciating pain” from the use of pepper spray. Because of the pain inflicted, and the fact that the protesters posed no danger to others, the Ninth Circuit reversed a judgment in favor of defendants. It held that the protesters were entitled to a trial on their claims for excessive force against the Humboldt County Sheriff’s Department and the individual law enforcement officers involved.

Recommendation #7: Law enforcement agencies in Washington should suspend the use of pepper spray until the presiding city or county determines that adequate studies have

been conducted to prove it does not present health risks to affected individuals.

Recommendation #8: *If the city or county accordingly authorizes the resumption of pepper spray usage, the following policies on the use of pepper spray should be adopted:*

- *Pepper spray may be used only when an individual poses an immediate threat to officers or others. It may not be used to disperse a crowd. It may not be used against an individual who is fleeing or complying with orders, or against a nonviolent demonstrator passively resisting arrest.*
- *Officers using pepper spray must comply with all other manufacturer's recommendations, including that it not be used in bursts longer than one second, in repeated bursts against the same target, or at a range of less than three feet.*

Use of Rubber Bullets

Pepper spray was not the only weapon that was used inappropriately, as the following incidents illustrate:

[The speaker was taking pictures of police activity on Capitol Hill Wednesday night.] *"When [the police] came within about 20 yards of me, I was shot with a 'bean bag' in the right thigh. I then began to walk away and was hit again with another 'bean bag' in the back of my left thigh and another time on the back of my left arm. I stopped to pick up the 'bean bag' and was subjected to a hail of rubber bullets. . . . I was hit again with a bean bag in back of the right knee."*

[On Capitol Hill Wednesday night,] *"While trying to walk home, not protesting whatsoever, I was shot with a rubber bullet and severely tear gassed. . . I put my hands in the air with two fingers symbolizing peace and began yelling repeatedly: 'I'm only trying to get home!'. . . yet as soon as [the police] were at a close distance they began shooting rubber bullets. . . . I immediately got scared and started to run away. Despite this, they continued to shoot*

and I was hit very painfully in the back of the leg. . . . I was on the sidewalk of Broadway the entire time.”

[The speaker was standing near the intersection of Harvard Avenue and Republican Street around 10:00 p.m. Wednesday night when] *“riot police were marching southbound to clear the street and sprayed pepper spray directly into the face of an innocent bystander. The sprayed man was disoriented and shoved out of the way [by] the advancing police. The man was sprawled on the sidewalk in pain. I went to help him with both my arms raised in the air. I grabbed his arm to pull him to safety. As I turned my back, I saw from the corner of my eye a police officer raise a gun. He fired a barrage of rubber bullets into my back.”*

Rubber bullets occupy a place beyond pepper spray on the “continuum of force” guidelines to which Seattle and other police departments refer. Just as pepper spray, which is designed to cause pain rather than mere discomfort, is a more extreme weapon than tear gas, rubber bullets, which strike and can physically injure their targets, represent an escalation of force beyond either of those two chemical weapons.

Like pepper spray, rubber bullets should be used only against individuals who pose an active threat – not against largely nonviolent crowds, and not against individuals who are passive or fleeing. Although they are not designed to kill people, they obviously can and do cause severe damage to eyes, teeth or soft tissue. Firing rubber bullets at seated protesters, at the backs of fleeing protesters, or firing them indiscriminately at non-protesters is unconscionable.

Lack of Intel l igible Orders to Disperse

Seattle police policy requires clear orders and sufficient time to disperse before employing chemical weapons, rubber bullets, or clubs. The Police Department’s operational procedures for “Unusual Occurrences” state flatly that “[t]hese devices shall only be deployed subsequent to a verbal dispersal or movement order.”

Numerous witnesses reported to the ACLU that police used clubs, gas, pepper spray and rubber bullets without giving any orders to

citizens. In some cases, orders may have been rendered unintelligible because the speaker was wearing a gas mask or because a police helicopter was circling overhead:

[On Tuesday morning at Sixth Avenue and Union Street,] *“The cops on the [armored] vehicle announced something over a loudspeaker, but no one could hear. Several demonstrators tried to get the crowd to quiet down, but just as the crowd quieted down and someone yelled to the cops ‘what did you say? Please repeat that,’ the cops advanced toward us and suddenly gas exploded everywhere and pepper spray was being sprayed directly in people’s faces and eyes.”*

[On Tuesday morning at Sixth Avenue and Pine Street,] *“I witnessed the use of several concussion grenades in the immediate vicinity of peaceful, seated protesters. No dispersal order was given.”*

“At the corner of Denny and Broadway I could see police one block north in a line across the street. The police did not make any announcements that I could hear, but began throwing gas and stun grenades and chasing people down the street toward us. Almost all the people were on the sidewalk.”

[The speaker was downtown Tuesday evening when,] *“I could see a riot cop running toward me 30 or 40 ft. away and spraying one of those fire-extinguisher sized bottles of OC [pepper spray]. We were not warned The police at no time gave an order to disperse or a warning or anything. Concussion grenades began going off in the midst of the crowd at the center of the intersection. The next thing I knew, the air was full of white clouds of gas. . . .”*

The Seattle Police training document for “Civil Disobedience, Crowd and Riot situations Involving Unlawful Activity” states, “It is critical to provide ample warning to an unlawful crowd. The field incident commander should ensure the warning is heard and allow reasonable time for the unlawful crowd to disperse before taking further action if circumstances allow.”

The training document amplifies that statement, explaining that the field incident commander should “identify the desired direction for the crowd to disperse and tell them verbally. . . . Unless an emergency exists, allow reasonable time for the crowd to disperse Consider placing officers at the rear of the crowd before issuing the order to disperse to ensure the warning [can] be heard by all.”

The police training document provides some flexibility and requires some subjective judgment. But it is hard to construe a crowd milling confusedly in the street, standing on a sidewalk, or even sitting on the pavement as an emergency.

Conflicting Orders, Confusion of Purpose

Witnesses have reported to the ACLU numerous incidents in which officers gave them orders that conflicted with other orders, or orders that other officers then attacked or arrested them for trying to carry out.

The report below, for example, came from someone who had marched up from the steelworkers rally on the waterfront on Wednesday and was driven back to the Pike Place Market area by police with tear gas and concussion grenades. After a while, people were just trying to leave the area. They could not figure out how to do it:

“When we were at First and Eagle police were to the north and south of us. The police to the north gestured for us to go west on Eagle. Many of us started moving in that direction. When we did they tear-gassed right where they pointed us to go. Over 100 of us were huddled in front of the apartment building. The police motioned for us to sit down. . . . After bringing in at least two busses they started arresting us all.”

Firing tear gas and rubber bullets at protesters who are following orders or already leaving the area indicates a wholesale loss of discipline and a lack of control by superior officers. Arresting individuals after they carry out the orders of other officers is incomprehensible. This seems to reflect a lack of training and timely communication, and perhaps the anxiety and frustration some officers may have felt in the absence of adequate support. Los

Angeles Sheriff's Captain Richard Odenthal wrote that on Tuesday afternoon, within the police perimeter defending the Convention Center, "the police were surrounded, totally committed and running out of logistics. Radio batteries were going dead and there were no replacements available, less-lethal weapons were seriously depleted, there had been no meal or comfort relief since the initial deployment at about 0700 hours. . . . The field commander remained essentially on his own."

The use of chemical weapons and rubber bullets for no legitimate reason may also reflect a lack of clarity about the purpose of the police action. In fact, many acts committed by the police seemed to have had no strategic purpose. On Tuesday morning, "tear gas was used as early as 1000 hours," Odenthal wrote, "but as there was no clear tactical objective it appeared that it served no purpose other than to move the crowd several yards."

The lack of clarity was also reflected by conflicting orders from police to protesters, as seen in the following incident reported to the ACLU:

[The speaker was trying to go home around 10:00 p.m. Wednesday on Capitol Hill.] *"I went up the street to Broadway and John. There was a line of police in riot gear blocking the street. I walked up to one of the police and asked if I could cross the street. . . . He said I could not, and told me I had to walk back down the street to Harvard. . . . [On Harvard Avenue, t]here was another police line advancing and pushing any residents or protesters back to John. . . . At that moment the two police lines threw tear gas at those of us trapped there."*

Recommendation #9: *The Seattle City Council and other jurisdictions that were involved in WTO policing should require that their police departments develop policies and procedures for managing crowd control in ways that:*

- *do not unduly restrict civil liberties;*
- *provide clear instruction on the use and continuum of force; and*

- *provide adequate notice and time to disperse along a safe and clear dispersal route.*

III

ACTS OF ABUSE BY INDIVIDUAL OFFICERS

Maintaining discipline is critical, if difficult, in the stressful situations presented by large-scale confrontations with citizens. The nation learned this during the civil unrest of the 1960s, and it has proven to be an important lesson ever since. Police are trained professionals and have a professional responsibility to respond with restraint to provocative language and unruly behavior. Being taunted or cursed at is certainly unpleasant, but officers are expected to maintain discipline even so.

Many, if not most, officers indeed did exercise an admirable degree of discipline during the WTO conference. But when officers broke their formations to chase down protesters and bystanders in the street – and when individual officers, still in formation, took it upon themselves to reach out and gratuitously strike or pepper-spray people near them – the ideal of discipline broke down.

Breakdown of Command and Control , Loss of Discipline

Seattle's police chief explained to reporters on Wednesday that when officers are in riot formations, they "operate as a unit," essentially under military discipline, and "individual discretion is limited." This is standard police practice for crowd control in civil disorders. The 1968 "Report of the National Advisory Commission on Civil Disorders," which security experts still use as a reference work on civil emergencies, explains that:

"The control of civil disturbances . . . requires large numbers of disciplined personnel, comparable to soldiers in a military unit, organized and trained to work as a team under a highly unified command and control system. . . . [W]hen a civil disturbance occurs . . . the individual officer must stop acting independently and begin to perform as a member of a closely supervised, disciplined team."

The officers on duty during the WTO conference clearly were working in difficult circumstances. They lacked adequate personnel, food, rest, and even bathroom breaks. Some were

subjected to verbal abuse, and some had things thrown at them. Some were injured in scuffles with demonstrators, and by their own tear gas, pepper spray or concussion grenades. Frustration was only natural. But trying circumstances do not excuse brutality.

The National Advisory Commission on Civil Disorders also notes,

“Officers at the scene of a . . . disorder are likely to suffer vilification and even injury from rocks or bottles. Nevertheless, police discipline must be sufficiently strong so that an individual officer is not provoked into unilateral action. He must develop sufficient confidence in himself and his fellow officers to avoid panic or the indiscriminate – and inflammatory – use of force that has sometimes occurred in the heat of disorders.”

Discipline requires training and leadership. Seattle did not supply its officers with enough of either.

The police *were* isolated and overwhelmed. Some officers could not communicate with their commanders. Los Angeles Sheriff’s Captain Richard Odenthal reported that in the middle of Tuesday morning, he “spoke with a SPD lieutenant who was at one skirmish line and asked what his mission or direction had been and he told me, ‘I haven’t spoken with anyone above my rank since I deployed here’ at 7:30 a.m. . . . At one point the field force commander came to me and said, ‘I have just been told to open up Union Street at all costs.’ I asked what that meant and he told me that it didn’t matter as he didn’t have enough people to do the job anyway. . . . [H]e didn’t know just how many officers they had at any position much less how many were assigned totally.” Odenthal said that “police. . . had no single point of contact to get direction or report conditions to. . . . [T]here was no clear tactical picture. . . from which decisions could be made. . . . There appeared to be a total breakdown in command.”

The Sheriff’s Office report confirms Odenthal’s impression. It observes that “[T]here was no coordinated overview of troop locations. . . [or] an established Command Post from which the [Seattle Police Department] could direct deployment. This resulted in the frequent operation of [King County] units as individual forces, not coordinated units projected towards a common goal.”

Riot gear only made communication more difficult. The Sheriff's Office notes that gas masks posed a special problem because radio microphones were not designed to be used with the masks.

Whatever the reasons, some officers were clearly out of control. The training and command leadership necessary to prevent this foreseeable result had not been provided. The ideal of police operating as a unit under command control too often was not reality.

Acts of Abuse

Not only did police commanders authorize unnecessary force, individual officers committed acts of brutality. Officers struck or pepper-sprayed people who posed no physical threat, were not resisting arrest, or were not being allowed to leave the scene. Some officers singled out people who questioned police authority or said things uncomplimentary to the police, and bystanders who were simply walking down the street. The following incidents are typical of the brutality reports we received:

[The speaker was watching a police line at an intersection on Sixth Avenue.] *"A woman approached the police line to ask them why they had reacted so violently. When she got close, an officer jabbed her in the face with a baton, cracking open [the skin on] the left side of her face. She retreated north, bleeding heavily and crying."*

[Downtown on Wednesday afternoon,] *"I witnessed a man who was peacefully protesting on the sidewalk get beaten with a wooden stick by a Seattle police officer. . . . [E]ven the fellow officers of the brute came over and tried to pull the officer away from the helpless victim. The other officers finally managed to pull the cop away and he stopped beating the victim. Then, while the victim was on the ground, obviously shaken and in pain, the officer sprayed him in the face with pepper spray."*

[The speaker was in the front row of a group of protesters marching in the street toward the Westin Hotel, where the U.S. trade delegation was staying. A line of riot police stopped the march. The protesters sat down in the street and linked arms.]

“The cops rushed us. One put a painful hold on my neck and shoulder to get me to unlock my arms. . .the cop pushed me onto my back. He grabbed his baton in two hands. Using a stabbing motion, he pounded the baton into my chest and ribs. . . . I will never forget [the officer’s] expression: the anger, the desire to cause pain, the cold fury. . . . The cop stopped beating me and grabbed me by the hair. He flipped me over onto my stomach. He slammed my head into the ground. He then knelt on my face. . . . His knee was covered by a hard plastic piece of riot gear. . . . My face was pressed into the hard concrete.”

Two egregious examples of police misconduct were captured on video and received widespread public attention. In one incident, an officer from Tukwila in riot gear kicked an unarmed, non-threatening man in the groin. The officer was subsequently removed from the SWAT team and suspended for two days. In the other incident, a King County deputy asked a woman videotaping police action from her car to roll down her window and then pepper-sprayed her in the face. An investigation by the sheriff’s office found that the same deputy had been caught on television news video running up behind a kneeling woman – whose red armband identified her as a medic – kicking her in the backside and knocking her forward. The deputy was fired for excessive use of force.

But no police agency involved in WTO security has acknowledged other incidents of brutality or more widespread misconduct. The Seattle Police’s After Action Report claims that “[o]fficers responded positively to [their] training by holding the line, exercising great restraint, and using only the minimum force necessary to accomplish objectives.”

The After Action Report does not even acknowledge the police misconduct on Capitol Hill. It speaks of disciplined action taken to disperse “rioters,” curtail vandalism, lift the “siege” of the East Precinct headquarters. The report not only chooses loaded words that distort the facts – the “rioters” were mostly people sitting or milling around in the street – but it also ignores the overwhelming weight of eyewitness testimony.

The Seattle Police Department’s procedure for “Unusual Occurrences” specifies, “Should unlawful activities occur during a

large gathering. . .[o]nly necessary force. . .will be used to control or disperse persons or groups or to effect arrests.” Reports of brutality are sufficiently widespread that they need to be investigated.

Incidents on Capitol Hill provided the clearest examples of officers losing control of themselves, as in these reports received by the ACLU:

[At 8:00 p.m., the speaker left the Capitol Hill restaurant at which she worked. Her boyfriend had come to walk her home. They headed east up Pine Street.] *“We were near the police line and were going to cross the street when an officer said ‘Get the fuck out of here’ and hit [her boyfriend] with his nightstick. [Her boyfriend] said we are not protesters, we are just walking home, and the officer hit him again. By then there was another officer and they pushed us up against the store front and frisked us. I told the officer that we were not protesters. . . . He said, ‘You have no idea what we have been through today.’ . . . They then sprayed [her boyfriend] with pepper spray and handcuffed him. **[The police took her boyfriend to a squad car. She started back toward the restaurant to get her boss.]** As I turned to look at [him] again, an officer sprayed me in the face with pepper spray.”*

“I witnessed a policeman in riot gear brutally assault a young woman 50 feet away on the sidewalk between Taco Bell and my apartment building. . . . This policeman on sweep patrol turned around based on something this petite woman apparently said. . . . He followed her and she kneeled on the sidewalk with her back to the officer. While holding her down with his knee in her back, he repeatedly sprayed [her] in the face with a canister of pepper spray. He then returned to the . . .formation of riot police at Mercer and Broadway. [Subsequently] I asked her what she had said. [She] told me she had asked why they were marching in our neighborhood.”

[On Broadway Avenue and Thomas Street on Capitol Hill around 9:30 p.m.,] *“There was a small blond haired man standing in front of [the Bank of America branch office.] He seemed pretty intoxicated, and was*

telling all the fleeing people to go home, that they were ruining his neighborhood. . . . I yelled at him to take cover as I ran past him. When I looked back, the police line had reached him and the first officer to reach the drunk man hit him twice with his billy club without even slowing down. He hit him hard, with the full weight of his running body, and the innocent civilian hit the ground immediately and lay perfectly still.”

When the Mayor appeared on Seattle public radio station KUOW’s *Weekday* show on January 5, 2000, he was asked about the events on Capitol Hill. He replied that on “Wednesday, people were tired. There were lots of people who weren’t our Seattle police up on Capitol Hill. . .and that’s part of the problem when you bring lots of people who aren’t Seattle Police Department, whether they’re from other departments or National Guard, you’re not always dealing with the same level of control. And you’re dealing with people who are tired, dealing with what they think and thought and believed, and I think probably we’ll be able to show, was a real threat.”

The fact that some officers were not from Seattle excuses nothing. Those officers were fortifying Seattle police lines within the City of Seattle at Seattle’s invitation and under the Seattle Police Department’s command. Even if some of the officers came from Bonney Lake or Tukwila, Seattle was responsible. City officials knew they might have to call on outlying departments in emergency situations. They should have ensured that officers from those departments were adequately trained. Instead, Seattle resisted releasing its limited funds to other departments for equipment or training.

Individual officers used clubs, tear gas, pepper spray and rubber bullets against bystanders in downtown Seattle, too:

[The speaker was part of a union march on Wednesday. She accompanied the march to Sixth Avenue and Union Street, where police stopped it. Marchers in front told everyone else to sit down. An officer with a bullhorn announced that everyone who did not leave would be arrested. Seconds later, the police launched tear gas and concussion grenades. In the ensuing chaos,] “I saw a man [who]

had been trying to get up at the outset. . .fall, hitting his forehead on the curb and cutting it open pretty badly. He just fell face first into the street and the cops came up and sprayed him in the face with pepper spray while he lay there. They then cuffed him and dragged him across the street where they chained him to a light post, leaving him to bleed and puke.”

[At Third Avenue and Pike Street around 3:30 p.m. on Tuesday,] *“The police started firing [at] people on my side of the sidewalk. I witnessed a young man get hit in the face at point blank range by a tear gas canister. I was shocked that this one police officer was firing down the sidewalk at non-protesters.”*

[A student at the Art Institute of Seattle was walking on the sidewalk, trying to catch a bus home. He was carrying a wooden staff he had carved for his sculpture class. Near Second Avenue and Union Street, he asked an officer for directions. He was trying to follow those directions when] *“three men in plain clothes rushed me, grabbing the staff from my hand and slamming me into the curb. . . . I threw one off me when all of a sudden I felt a knee with a person’s full weight behind it in my back and the side of my face slam down on the edge of the curb. I asked who they were and what I did. They proceeded to handcuff me and shove mace cans in my face, screaming, ‘shut the fuck up unless you wanna go blind, asshole.’”*

The Seattle Police Department’s procedure for “Unusual Occurrences” states that “In civil disobedience, crowd, or riot situations involving unlawful activity, involved police personnel shall adhere to the Department’s basic law enforcement mission of protecting life and property.”

None of the people in the incidents above posed a threat to life or property. The police personnel involved were not adhering to the department’s basic mission. Discipline had broken down.

Problems cannot be properly addressed until the City acknowledges police misconduct.

Chemical Weapons Used to Attack Peaceful Citizens

Refusing to acknowledge serious problems, the Seattle Police After Action Report claims that “Chemical Agent Response Team training resulted in the effective and controlled delivery of chemical irritants.” That statement does not square with a multitude of eyewitness reports, or with reporting done on the scene by the Seattle media. Some highly trained officers may in fact have performed admirably with chemical weapons. Others clearly used those weapons improperly and indiscriminately. Whatever the tactical justification, chemical weapons were not used just for tactical purposes.

Police should only use pepper spray as a defensive weapon – against someone who poses an immediate threat to an officer or another person. Neither Seattle’s own policies and procedures nor conventional police practice justifies pepper-spraying someone who poses no physical threat and is not refusing to disperse. Used against a non-threatening individual at close range, it becomes an aggressive weapon.

Chemical weapons were used repeatedly against individuals who were not threatening anyone’s life or property, who were not refusing to disperse, and who were not resisting arrest, as the following incident reports received by the ACLU illustrate:

[Downtown on Tuesday, the police drove the speaker and other protesters from an intersection. He tried to run.] *“I was then hit with pepper spray directly in the face at point blank range by an officer who held me by my jacket.”*

[The speaker was observing and taking pictures for her affinity group, which was protesting at Eighth Avenue and Seneca Street on Tuesday around noon.] *“My friend. . . was picked up by the belt of his pants and a policeman poured an entire bottle of pepper spray down his pants.”*

Under such circumstances, there is no reason to use pepper spray except to cause pain.

Police routinely ignored standard procedures for employing pepper spray. Def-Tech’s handling instructions for the pepper

spray used by the Seattle police list first aid procedures which include providing fresh air and flushing eyes and skin with cool water. The Seattle Police Department's own policy states that suspects who have been pepper-sprayed should be kept in ventilated areas and their eyes rinsed with cool water. If someone who has been pepper-sprayed begins vomiting or has trouble breathing, officers must request medical aid immediately.

The following incident shows that this policy was sometimes ignored:

[The speaker was in a group of protesters who were pepper-sprayed Tuesday morning at the intersection of Sixth Avenue and Union Street.] *"I made it across the street to the medics who tried to treat me but I was having trouble breathing. . . . People who had been injured (myself included) were pleading with the cops to let us leave the area so we could get some fresh air. The cops refused for about five minutes and then finally relented. . . . I collapsed, went into respiratory distress, and then shock and had to be taken to the hospital in an ambulance."*

Lack of Officer Identification

Anonymity can tempt people to break the rules, and, if they break rules, can enable them to get away with it. Officers are required to wear badges and nametags so that they can be held personally accountable for their actions. When officers wear garments that hide their identification or when they deliberately remove badges and nametags, they cannot be held accountable.

During the WTO conference, some officers took advantage of temporary anonymity to commit acts of brutality. The City set the stage for misconduct by issuing riot gear that bore no names or numbers and hid the badges and nametags on police uniforms. Some officers wore rain ponchos that concealed their identities. Other officers deliberately removed or altered their identification.

The ACLU has received numerous reports from citizens who said there was no visible identification on law enforcement officers, and that officers did not identify themselves when asked. The following reports are illustrative:

[At Denny Park,] *“I noticed that all of the police officers had absolutely nothing that identified them on their uniforms. No name. No badge. No number.”*

[The speaker was videotaping police activity at Second Avenue and Pike Street around 3:00 p.m. Wednesday.] *“The police were not wearing any type of identification other than the word ‘Police.’ I [saw] cops wearing ski-masks to hide their identity. . . . I asked a cop on camera ‘why the ski masks, what’s your badge #, name . . .’ etc. but he would not respond.”*

The Seattle Police Department policy manual states that when a citizen requests identification from an officer who is on duty, that officer “shall verbally provide their name and Department serial number, or provide a Department issued business card that contains their name or serial number.” It states that insignia of rank shall be worn on all uniforms. Policy also specifies that all uniformed officers shall wear badges of authority and cap shields for the ranks of lieutenant and above, and that Department-issued cloth nametags shall be worn by each on-duty uniformed officer on their uniform and uniform jacket or jumpsuit. But the same policy states that rainwear “[s]hall be worn without patches, nametags, or cloth badges.” This is unacceptable.

The King County Sheriff’s Office has acknowledged that some of its officers had deliberately altered their identification. The Sheriff’s Office report notes that riot officers were given “stick-on” letters to place on the backs of their helmets, but “some individual team members re-arranged/removed the ‘stick-on’ letters from their helmets, making them identifiable only to those whom [sic] knew them or knew their ‘new’ name as created on their helmets.” A Sheriff’s spokesman assured the press that the officers had not worn false names for any improper reason; it was all in fun. For whatever reason, the officers deliberately made it impossible for citizens to identify them.

Some police officers actively sought to prevent the media and citizens from recording incidents of brutality. A network-affiliate television camera caught an officer prodding a TV reporter with the end of a club and caught another officer pepper-spraying a cameraman. TV reporters explained on the air that they and their cameramen had just been pepper-sprayed. The ACLU has received

several reports of camera operators singled out for attack. In one incident, a press photographer who was taking pictures of police firing pepper spray at seated protesters was sprayed directly in the face by an officer, even as he tried to disperse. The following reports tell of similar actions:

[Downtown on Wednesday afternoon,] *“I was standing on the sidewalk, videotaping a small crowd of people getting pepper-sprayed by police. A policeman came up from my right hand side and pepper-sprayed me right across the camera lens and in my eye. Five minutes later I was interviewing a person who had just been sprayed, gassed and beaten by police and a cop came up and sprayed me again in my eyes.”*

[The speaker was standing at Sixth Avenue and University Street around 11:00 a.m. on Tuesday morning.] *“One. . . guy went down and the police ran up to him and started beating him. . . . They then got him down on his knees with his arms behind his back and they started beating him with clubs. He started to struggle, as anyone would do, and they just beat him harder. . . . As I approached them [with a camera], other officers surrounded them to block my picture.”*

[On Tuesday afternoon at Fourth Avenue and Stewart Street,] *“I was taking photographs and collecting data [about] some of the damage downtown for our local union’s newspaper and was. . . attacked by police with [pepper spray] and tear gas and when I turned to run they shot me with rubber bullets. . . . I had my press pass quite visible.”*

Recommendation #10: *All police officers must at all times be clearly and readily identifiable by name and department.*

- *The outermost layer worn by police personnel, including riot or rain gear, should bear easily visible identification numbers.*
- *When outer-layer gear is issued, the department should record the name of the officer receiving each number.*

Recommendation #11: *Law enforcement agencies in Washington should have mechanisms in place to properly investigate allegations of police misconduct.*

IV

IMPROPER ARRESTS AND PROSECUTIONS; MISTREATMENT OF PEOPLE IN CUSTODY

Police made hundreds of improper arrests, detaining for days people who would never stand trial. Then, after the demonstrations were over, charges were dropped. The City Attorney doggedly pursued other charges that later were dismissed.

Individuals taken into custody retain basic rights, such as the right to consult an attorney, basic medical care, and due process of law. Yet some of the people arrested during the WTO conference – who had not been and would never be convicted or even tried – were denied these rights. Some of them reported that police and jail personnel committed acts of brutality. This happened on the buses that carried them out of downtown Seattle, at the old Sand Point naval base where most of them were taken for processing, at the King County Jail in Seattle and the Kent Regional Justice Center, where they were eventually booked and held.

Improper Arrests and Prosecutions

The police frequently mishandled arrests. They made scores of arrests that did not meet the required “probable cause” standard. Hundreds of protesters who would never stand trial were jailed for days. After the demonstrations ended, the charges against them were dropped.

Police arrested a large number of people on Wednesday morning at Westlake Park, within the declared “no protest zone.” Officers did not write individual arrest reports for many of the people arrested there. They simply copied a report that had originally been written for a Port Townsend woman who, ironically enough, was not even there. She had been arrested eight hours later after verbally challenging police officers’ unreasonable use of force near the Pike Place Market.

Police arrested people at Westlake Park for awhile, but there were too many protesters and not enough police. Police radio dispatch

tapes make it clear that Seattle police were not equipped to handle the mass arrests:

At 8:23 a.m., “There’s some confusion here, we’re getting way too many buses but we’re getting no prisoner processing. Is it being made clear . . . that we do *not* need buses, we need prisoner processing teams?”

At 10:15, “We don’t want to have any more arrests if we can possibly help it, due to the booking situation.”

Finally, at 10:29, the police radio tells “all units at Westlake, you’re free to go, thank you very much. Disperse smartly from the area.”

KIRO-TV, which taped the police withdrawal, reported that the police commander on the scene told protesters, “We’re outta here,” and the arrests simply stopped. People who had not been arrested before the arbitrary cutoff point were allowed to stay. People arrested earlier went to jail.

The City should have made sure there were enough officers on hand to carry out legitimate arrests and enough buses on hand to transport arrestees out of the area immediately. Seattle police could have assigned one officer in each arrest team to complete an individual report for each suspect. The arresting officer could have been photographed with the arrestee as evidence and as an aid to memory. By and large, this was not done. People were arrested and loaded onto buses with after-the-fact paperwork that could not possibly meet legal requirements.

The suspicious motivation behind the arrests is amplified by the fact that for hundreds of people who were arrested, their release from jail was conditioned upon their agreement not to enter a specified downtown corridor. While most people accepted that condition, those who did not were not released. In a more extreme case, prosecutors offered one arrestee a deal for her release that involved an agreement not to protest anywhere in the country for two years.

According to the Seattle police’s After Action Report, 631 arrests were made. The City ultimately dropped charges in the vast majority of cases. Five hundred forty-one people were charged

with misdemeanor crimes – primarily failure to disperse and obstructing pedestrians. Charges were dismissed against 373 of them, and no charges were filed against another 138. Of the 24 people whose cases actually went to court, only two were found guilty, ten pleaded guilty, and two were acquitted. As of June 15, the remaining cases were awaiting jury trial or otherwise unsettled.⁶ The King County Prosecutor’s office told the ACLU that 25 people had been charged with felonies, but our attempts to obtain further information about them from the Prosecutor’s office have been unsuccessful.

The City Attorney should have dropped charges quickly against hundreds of individuals he must have known would not be convicted. The *Seattle Times* reported on December 10: “[a]lthough many of the police reports are vague – written in haste by the arresting officers – the cases are proceeding through court, and trial dates are being set. . . . [M]any of the arrest reports note only a group’s alleged violation, not how an individual may have been involved. City Attorney Mark Sidran says the City can prevail.” He should have known better. And the Police Department should have only made arrests that could stand up in court.

Infl iction of Pain on Non-threatening Arrestees

Arrestees have reported brutal treatment by jail guards and arresting officers at Sand Point, King County Jail, and the Kent Regional Justice Center, and a few have reported serious injuries:

[One incident was extensively described in the press. In its December 30 edition, the Seattle Weekly reported:] *“Keith Holm says he was beaten up by uniformed officers immediately upon arriving at the King County jail on Wednesday of WTO week. ‘Right as I went in, I was singled out off the bus, along with five others,’ says the 35-year-old construction contractor. He claims a half-dozen guards took turns assaulting him. ‘I was passed around like a hackey-sack. They stomped on my back and on the backs of my knees. They busted my face through a steel door and then through a second glass door. There were clumps of my hair in their fingers. There was nonstop screaming and profanity. They kept asking my name and saying they were going to kill me, going to fuck me up.’ . . . Jerry Knight. . . was on the same*

bus taking Holm and other WTO captives from a processing center at Sand Point to the jail. . . . Inside the jail garage, 'there was a lot of shouting and yelling,' says Knight. 'The cops told us to keep our heads facing the wall.' Just before he turned away, Knight could see the guards slam Holm's face into the wall and throw him to the ground. . . . [Holm] was later released from jail without any charges being filed." [The ACLU received a report from an individual who witnessed some of the police's mistreatment of Holm in the jail.]

[The speaker was part of a group of protesters in a holding cell at the Kent Regional Justice Center. The group refused to follow an officer out to the regular cells without talking to an attorney. A group of officers in riot gear appeared at the door. Four officers pulled a man away from the others,] "took him outside the room and placed him into a wheelchair-like device and wheeled him down the hall. . . . [F]our officers re-entered the room and grabbed. . . a very tall man with shoulder-length curly partially graying hair. . . . He was taken outside the door and his arms were wrenched behind his back and shackled. He was placed in the 'wheelchair' and [an] officer brought his can up to [this prisoner's] face and sprayed him directly in the eyes with pepper spray. . . . I stood up and looked out the window and I saw that they had placed a towel or bag over his head and were holding him down. . . . The next day he told me that they had massaged the pepper spray into his eyes with the towel and were holding his mouth shut so he couldn't scream with a separate cloth."

[Another speaker who was held at the Kent Regional Justice Center] "witnessed. . . non-violent activists who were passively resisting (going limp) lifted out of their cell by two guards and thrown onto a black molded plastic chair where a third guard would yank the protester's hair back and two other guards would strap the protester into this chair. They would then wheel the protester away. I watched this happen to at least ten people and in one instance I watched a guard spray pepper spray directly into the protester's face (from maybe five inches away) as another guard was yanking his hair back."

Representatives from the National Lawyers Guild collected approximately 300 reports of brutality in the jails. We do not know how widespread such brutality was. Clearly it went beyond one isolated incident, and it went beyond Kent:

[The speaker had been arrested in downtown Seattle and taken by bus to Sand Point. Prisoners refused to leave the bus. After midnight, officers boarded the bus to take the prisoners out.] *“I was pulled onto the floor of the bus, in front of the rear door. . . . [T]he police officer who told me to get up. . . was a young white male with short hair. . . dressed only in a blue jumpsuit. . . that had a light blue Seattle Police Department patch. . . . I think he said ‘get up’ but he may have said ‘stand up.’ As soon as he said that he violently wrenched my left wrist and forearm far over in front of me, in a clockwise direction. . . . I recall screaming when he twisted my arm. . . . The pain shot up my arm with an intense, electric quality. I remember having the feeling that I had actually heard something popping or ripping in my arm, and thinking at the same time. . . that it must have been some kind of illusion. I yelled out that I had metal screws in my arm.”* **[The officer twisted his right wrist instead. In custody for several days, he was given ice packs, ibuprofen and other minimal treatment for the pain in his left arm, but the arm was not X-rayed, and he was not given a sling to immobilize it. When he was released on Sunday morning, he went to the hospital where his arm was X-rayed and diagnosed with a spiral fracture.]**

[At the King County jail,] *“A woman going by the name of ‘peace’ was denied her inhaler despite a severe asthma attack. They gave her a glass of water instead.”*

Threats and Assaults on People in Custody for Exercising Constitutional Rights

Demanding an attorney or refusing to sign forms should not be grounds for physical abuse:

[In jail,] *“A guard would threaten us with bodily injury if we asked for anything.”*

[While the speaker was imprisoned at the Kent Regional Justice Center,] *“I was denied access to phone, food or water until I signed forms that they refused to let me read.” [He saw four other people who had refused to sign the forms taken into another room, strapped to chairs, and pepper-sprayed directly in their eyes. He finally did sign. Afterward, he tried to make a telephone call.] “When I approached the phone and sat down, I had just dialed the number when five officers came up behind me and yanked [the] telephone out of my hand and dragged me by my hair and feet and threw me back into the tiny room.”*

Recommendation #12: *King County Jail officials should investigate allegations of misconduct at the jail during the WTO protests and hold accountable any personnel found to have committed acts of misconduct.*

- *Jail personnel must wear clearly identifiable badges or nametags at all times.*
- *King County Jail administrators should review their policy on the use of pepper spray, restraint chairs, and other compliance techniques by jail personnel. Pepper spray should not be used on an individual in a restraint chair.*

CONCLUSION

In 1928 Justice Louis Brandeis wrote, “The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.”

Washington Supreme Court Justice Robert Utter expressed similar sentiments, writing, “It is often when government is most eagerly pursuing what it perceives to be the public interest that it is most likely to sidestep constitutional safeguards or to denigrate constitutional liberties.”

Everyone agrees that faced with similar circumstances in the future, the City should do things differently. But what lessons will our city leaders take away? We hope that the lessons will *not* be, as some have advised, that next time the City should come down on protesters earlier and more harshly. Rather, the lesson must be that the City and its employees take more seriously their responsibility to run our city in a manner that ensures the constitutional rights of all.

For regardless of how well-meaning the City of Seattle may have been during the WTO ministerial meetings, substantial violations of civil liberties took place. If the City does not acknowledge its mistakes, it is doomed to repeat them.

NOTES

¹ “At approximately 0630 hours,” wrote Los Angeles County Sheriff’s Department Captain Richard Odenthal, an expert on riot control whom Seattle police hired as a training consultant to prepare its officers for the WTO, “a group of police officers from Portland, OR, contacted me and advised that a group of several hundred demonstrators had blocked an intersection, stopping vehicular traffic about 3 blocks north of the [Convention Center] using ‘yellow police tape’ and dumpsters. At approximately 0650 hours, the first anti WTO demonstrators began to arrive on Pike Street at 6th Avenue and other streets surrounding the [Convention Center]. By 0730 hours, the [Convention Center] was completely surrounded by thousands of demonstrators.”

The City did not even plan to deploy its forces until 7:30 a.m. “[T]he first demonstrators were anticipated at about 0800 hours,” Odenthal wrote, “and the demonstration management personnel were to be prepared to move into designated positions at 0730 hours.” Television crews filmed Seattle police getting into position just before 7:00 a.m. and setting up flimsy barriers when demonstrators were already arriving downtown and getting into position on the morning of November 30.

² The King County Sheriff’s Office report notes, “SPD changed [its] Demonstration Management Committee leader 4 times, effectively forcing the committee to start over with each change. This process resulted in a very narrow time frame during which the training could occur.... In addition...it seemed that SPD upper command was not committed to the idea of joint training,

and this. . .also contributed to the lack of training time available [to Sheriff's deputies] before the [WTO Conference].”

³ The After Action Report reports a total of 11,600 training hours and says that on November 29, the City had 1,164 officers on duty throughout Seattle. The report does not specify the precise number of hours of training each officer received, nor the exact content of the training – for example, whether officers received explicit instruction in the protection of the civil liberties of demonstrators, even when demonstrators are subject to arrest. Some officers did receive special training for WTO but not every officer called to duty on Seattle's streets that week received exactly the same training, as evidenced in the King County report. Nor does the report specify whether officers from non-Seattle agencies who were called up at the last minute received adequate crowd control training.

⁴ On October 20, 1999 – slightly more than a month before the WTO conference began – the Seattle Police Department issued a new policy outlining the proper use of force policy for civil disobedience, crowd control, and riot situations. The “Unusual Occurrences” policy states that the authorized use of chemical weapons and less lethal weapons shall include at least one of the following objectives:

- The prevention of violence.
- Suppression and dispersal of unlawful assemblies with minimum hazard to the public or law enforcement.
- To aid in the overcoming of either passive or aggressive resistance to affect arrest.
- Area or building deprivation to prevent further destruction of property when other means are not practical.

In addition, the Department follows a continuum of force model which states that the lowest threat shall be met first with police presence and then by a verbal request or warning. The proper police response in the case of non-compliance or threat escalates in degree of severity is as follows:

- open hand/escort/handcuffing
(compliant/cooperative subject)
- chemical irritants/less lethal munitions (non-compliant/ resistive/assaultive subject)
- closed hand (non-compliant/assaultive subject)
- impact weapons (baton/riot stick)

These policies are inadequate to be of any real guidance for the officer on the street. (See Appendix D.)

⁵ The ACLU sent a letter to the Seattle Police Department about this new policy on November 22, 1999, objecting to the use of pepper spray to overcome passive *or* aggressive resistance to arrest. The ACLU said that using pepper spray against passive people would be excessive force, and noted that in a previous meeting, a Department representative said they would not use pepper spray against nonviolent demonstrators and that the policy should be further revised to remove this ambiguity. The letter also took issue with the use of pepper spray for dispersal of unlawful activities, and urged the Department to reconsider the use of pepper spray in dispersing crowds. A copy of this letter was forwarded to Deputy Mayor Maud Daudon.

⁶ Misdemeanor data provided by the Seattle Municipal Court.