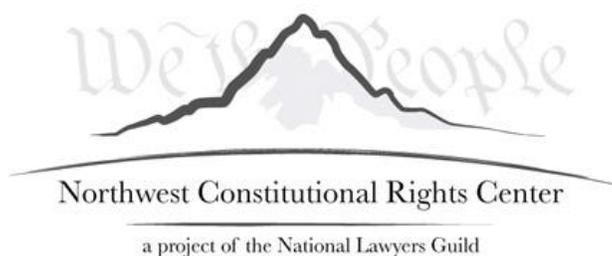


# **Whose Streets? -- Recommendations to the Portland Police Bureau for Responding to First Amendment Assemblies**



Written by:  
Shauna Curphey  
Staff Attorney  
Northwest Constitutional Rights Center

Published by:  
The Northwest Constitutional Rights Center  
Alejandro Queral, Executive Director  
520 S.W. Sixth Avenue, Suite 1050  
Portland, OR 97204  
503-295-6400

The Portland Chapter of the National Lawyer's Guild  
Ashlee Albies, Chair  
815 SE Second Ave, Ste 500  
Portland, OR 97204  
503.221.1792

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## **Executive Summary**

At the World Can't Wait demonstration in downtown Portland on October 5, 2006, Portland police officers deployed rubber bullets, pepper spray, horses and batons against protestors. In the wake of that event, the Portland Police Bureau invited the Northwest Constitutional Rights Center to provide input on the Bureau's crowd control policy. The Center made several recommendations based on input from activists and research on crowd control. The Bureau failed to follow up on that input.

At the recent March 18, 2007 protest against the Iraq War, police inflicted pepper spray, horses and batons against demonstrators once again. These actions prompted the Northwest Constitutional Rights Center and the Portland Chapter of the National Lawyers Guild to examine the history of Portland Police Bureau responses to political protests and to make public recommendations for change to the Bureau's crowd control policy.

The Northwest Constitutional Rights Center and the Portland Chapter of the National Lawyers Guild work together to safeguard the rights of political activists in Portland. At every major demonstration in downtown Portland, legal observers from the National Lawyers Guild take to the streets to walk alongside protestors, documenting incidents of police misconduct. In addition, National Lawyers Guild legal workers and attorneys volunteer their time to defend the rights of individuals arrested at protests. The Northwest Constitutional Rights Center investigates protestors' complaints of police misconduct.

In the sections that follow, this report provides a chronology of Portland Police Bureau tactics during protests in Portland over the past decade. The report also analyzes the Portland Police Bureau crowd control and use of force policies as they relate to these tactics. Finally, the report concludes with a series of specific recommendations for changes in Portland Police Bureau policy.

## Findings

Our investigation reveals that the Portland Police Bureau reaction to the demonstrations that took place on October 5, 2006 and March 18, 2007 are not isolated incidents of inappropriate force. On numerous occasions, the Bureau has indiscriminately used pepper spray on demonstrators and mounted patrol officers have charged directly into crowds or at individual protestors. Also of concern is the Bureau's use of "less lethal" impact munitions, including beanbag rounds and rubber bullets, at several demonstrations. Moreover, though the Bureau has promised to change its crowd control policy to address the use of impact munitions and horses, it has so far failed to do so.

Furthermore, our research demonstrates that impact munitions and pepper spray pose serious safety risks. Impact munitions can be deadly when used at close range. Pepper spray also poses serious hazards because it can have dangerous effects on individuals with preexisting respiratory problems, such as asthma. Pepper spray also poses greater risk to children, the elderly and people with certain eye conditions.

In addition to the safety risks involved, the Bureau's use of pepper spray, horses and impact munitions also escalates sensitive situations, confuses and frustrates demonstrators and spurs resentment toward the police force. The Bureau's use of these tactics runs counter to the latest research on crowd control, which emphasizes avoiding confrontation and practicing planning and prevention to help crowds accomplish their goals within the law.<sup>1</sup> Though the Bureau seems to adhere to a cooperative model for planned or permitted events, it often takes an unnecessarily confrontational approach to events not coordinated with the Bureau beforehand.

Finally, the Northwest Constitutional Rights Center and the Portland Chapter of the National Lawyers Guild find that the Bureau has repeatedly used plainclothes officers and video surveillance during First Amendment assemblies. We find this practice particularly troubling in the light of the Bureau's history of spying on political activities. Moreover, the Bureau's use of these tactics may violate both state law and the constitutional rights guaranteed by the First Amendment to the U.S. Constitution.

## Recommendations

The Northwest Constitutional Rights Center and the Portland Chapter of the National Lawyers Guild studied the risks posed by crowd control tactics, the Portland Police Bureau's current crowd control policies and the policies of several police departments around the nation. We worked to find terms that address both the Bureau's legitimate law enforcement interests and the right of individuals to engage in First Amendment activities. The following seven recommendations grew out of these efforts.

- 1. *Officers shall not use pepper spray at First Amendment assemblies.***
- 2. *Officers shall not use less-lethal munitions at First Amendment assemblies.***
- 3. *The Bureau should abolish the use of horses for crowd control at First Amendment assemblies.***

- 4. *The Bureau shall not photograph or videotape protestors engaging in First Amendment activities and will not place plainclothes officers in the crowd.***
- 5. *The Bureau, to the extent possible, should respond to unforeseen demonstrations that take place on sidewalks, streets or in public parks in the same manner as events that have been coordinated with the Bureau beforehand.***
- 6. *The Bureau's crowd control policy should have clear language indicating when police can declare an unlawful assembly and the methods they must use to declare an assembly unlawful.***
- 7. *Officers should not penetrate a crowd to make an arrest unless the targeted individual has engaged in serious criminal conduct.***

## ***Repeated Abuses: A Chronology of Portland Police Bureau Responses to First Amendment Assemblies***

**August 17, 1998** – Portland Police, without warning, shot six beanbag rounds at 40 demonstrators in Northeast Portland who gathered to protest the Bureau's decision to close a public park to prevent a large annual birthday celebration from taking place. The police claimed they fired because they did not know the intentions of a group that was heading toward them after police made an order to disperse. A sergeant made the decision to fire roughly 15 minutes after the dispersal order. An individual shot by a bean bag round said police boxed the crowd in and shot him as he was leaving the area.<sup>2</sup>

**November 18, 1998** – Portland Police Chief Charles Moose told the Portland City Council that the investigation of the August 17 incident was "absolutely insulting" and a waste of time.<sup>3</sup> The Chief rejected calls by the African American Police Advisory Council to prohibit the use of less-lethal weapons in crowds. The Chief, however, told City Council he would change policy to require an incident commander to make the decision to fire less lethal weapons to control a crowd. Despite this promise, the Bureau has yet to implement this change in its written crowd control policy, nor is it mentioned in the Bureau's policy on impact munitions.<sup>4</sup>

**December 17, 1998** – A Portland mounted patrol officer pushed a Peace and Justice Works activist up against a wall during a demonstration against the U.S. bombing of Iraq.<sup>5</sup> In addition, a Portland plainclothes officer joined the protest and relayed information to officers about the crowd's movements.<sup>6</sup>

**October 15, 1999** – Portland Police mounted patrol officers charged through the protestors at a Free Mumia Abu-Jamal demonstration in downtown Portland.<sup>7</sup> As the crowd began to disperse, police arrested a demonstrator for littering because he dropped a flower in a public park.<sup>8</sup> When another demonstrator questioned the arrest, a mounted patrol officer grabbed him by his jacket. A second officer then arrested the demonstrator, breaking his arm in the process.<sup>9</sup>

**May 1, 2000** – Police deployed batons, ATVs, horses, beanbag rounds and pepper spray against participants in the annual May Day workers' rally in downtown Portland. Police on horses charged at individual protestors, knocking at least one person down.<sup>10</sup> Video of the incident showed an officer shooting a demonstrator in the back with a beanbag round,<sup>11</sup> and another officer striking a demonstrator with a baton without provocation.<sup>12</sup> At least one officer disagreed with the command to fire beanbag rounds into the crowd.<sup>13</sup> Police Chief Mark Kroeker commented that officers showed restraint.<sup>14</sup> The police department received 23 internal affairs complaints arising from the incident,<sup>15</sup> yet only three were ever investigated.<sup>16</sup>

**June 28, 2000** – In a report on the May 1, 2000 protest, Chief Kroeker stated the department would purchase improved sound amplification equipment to communicate clear orders to the crowd and review the use of beanbag rounds and mounted patrol units in crowd control situations.<sup>17</sup>

**September 26, 2000** – Police used horses, pepper spray and batons on a group of demonstrators who took over a street adjacent to Pioneer Square to oppose the International Monetary Fund/World Bank meeting in the Czech Republic. At least two people suffered concussions. The police employed this show of force despite the fact that the crowd occupied

only one block of Broadway and left the intersections clear. In addition, the police blocked off the intersection of Broadway and Morrison, stopping MAX light rail service in the process. The draconian police response led to a standoff between police and protestors that dissipated when protestors marched through downtown and dispersed on their own volition.<sup>18</sup>

**January 18, 2001** – In a follow up to the May Day 2000 incident, which prompted several complaints regarding inappropriate use of police horses, Chief Kroeker increased the size of the mounted patrol unit and integrated the unit into tactical plans for crowd control. While Chief Kroeker finally purchased sound equipment and provided additional training to improve officers' response to protests, he failed to follow through on his promise from his May Day Follow-up Report that "no less lethal use of force is used to disperse crowds."<sup>19</sup> The Portland Police Bureau never implemented this change in its written policy.<sup>20</sup> The current Portland Police Bureau crowd control policy and its less lethal weapons policy both fail to prohibit the use of less lethal weapons to disperse crowds.<sup>21</sup>

**October 31, 2001** – Though the city spent \$47,500 to settle a civil rights lawsuit arising out of the October 15, 1999 incident when an officer broke a protestor's arm, the City Council voted there was "insufficient evidence" to determine that the officer used excessive force.<sup>22</sup>

**August 22, 2002** – Portland police deployed pepper spray, batons and rubber bullets against demonstrators assembled to protest President George W. Bush's attendance at a Republican fundraiser in downtown Portland. Without warning, police indiscriminately used pepper spray to move protestors back from a barricade.<sup>23</sup> The spray reached several children in the crowd, including a 10-month-old and a 3-year-old, as well as members of the Independent Police Review division, the city office charged with police oversight. Many protestors said they never heard orders to disperse.<sup>24</sup> Several individuals reported that police prevented their efforts to leave the area. Police also drove police cars through the crowd and shot rubber bullets at individuals.<sup>25</sup>

Chief Kroeker responded to criticism over police conduct at the Bush protest by stating, he was "pleased with the way it went."<sup>26</sup> In addition, police described rubber bullets as an effective way "to move a crowd."<sup>27</sup> Assistant Chief Foxworth insisted that this did not conflict with Chief Kroeker's earlier statement, in the wake of the May Day 2000 protest, that the Bureau does not use less lethal force to disperse crowds.<sup>28</sup>

**August 31, 2002** – Police used pepper spray against participants in the city's monthly Critical Mass bicycle ride. A police spokesperson claimed that ride participants spat and threw rocks at officers, while riders said that motorcycle officers shouldered people off the road and that one officer shoved a young woman to the ground.<sup>29</sup>

**October 25, 2002** – Protestors filed a federal lawsuit against the City of Portland claiming police used excessive force during the August 22, 2002 Bush protest.<sup>30</sup> The plaintiffs, including three children who attended the protest with their parents, sought financial damages, a court-ordered civilian police review board and a ban on using pepper spray and rubber bullets at protests.<sup>31</sup>

**November 27, 2002** – The Portland Police Bureau released a report summarizing their findings on police conduct during the Bush protest on August 22, 2002. Once again, the Bureau acknowledged the need to improve the loudspeakers used at protests. The findings also indicated that orders to protestors should include warnings that failure to comply could result in the use of pepper spray or other less-lethal weapons. The report included suggestions for

protestors, including that they should comply with the law and “carefully consider whether to bring small children to such events.”<sup>32</sup>

**March 20 - 25, 2003** – Portland police deployed pepper spray during several large protests held in response to the U.S. invasion of Iraq. On March 20, protestors closed the west end of the Burnside Bridge for several hours and smaller groups temporarily closed the I-84 and I-405 freeways. Police used pepper spray to move protestors away from traffic.<sup>33</sup> Earlier in the day, officers struck a KATU television news engineer and shoved him into his news van. At another demonstration on March 25, two officers repeatedly sprayed a young woman directly in the face while she cowered between a no-parking sign and a newspaper box. In addition, officers hit a protestor on the head with a pepper spray canister and pepper sprayed him in the face after they forced him on the ground to arrest him. Attorneys for the plaintiffs injured at the August 2002 protest added these protestors’ claims to their federal civil rights suit to allege a pattern of police abuse at First Amendment events.<sup>34</sup>

**August 23, 2003** – The Portland Police Bureau deployed more than 400 officers, including riot control squads, mounted patrol units, ATVs and motorcycle officers, to provide security for a Republican fundraising event attended by President Bush. Before the event, police warned residents in the area to secure their pets and valuable property. Police used metal barricades and an 8-foot fence topped with barbed wire to restrict demonstrators’ access to the event.<sup>35</sup> Riot police, bicycle officers and plainclothes officers responded when several protestors entered the street.<sup>36</sup> Police forced the protestors off the street and then issued a general order to stay out of the street and to disperse.<sup>37</sup> Fifteen minutes later, as demonstrators were dispersing, one of them stepped into the street. An officer responded by chasing her into the crowd, grabbing and twisting her arm, dragging her by the arm, cuffing her and then shoving her against the custody van, injuring her in the process.<sup>38</sup>

**December 5, 2004** – The Portland City Council approved a \$300,000 settlement of lawsuits alleging police use of excessive force during the August 2002 Bush protest and the March 2003 Iraq War protest. Though Mayor Vera Katz admitted, “mistakes were made,” the Portland Police Bureau refused a settlement proposal restricting the use of pepper spray or impact munitions as crowd control tactics.<sup>39</sup>

**May 17, 2005** – A federal judge ordered the City of Portland to pay \$545,000 in legal fees in the lawsuit alleging Portland police used excessive force during the 2002 and 2003 protests.<sup>40</sup> Attorneys used a portion of the fees to found the Northwest Constitutional Rights Center.<sup>41</sup>

**May 1, 2006** – Thousands of immigrants and their supporters marched in downtown Portland without incident.<sup>42</sup> Police videotaped at the event but made no arrests.<sup>43</sup>

**October 5, 2006** – Police used rubber bullets, batons, pepper spray and mounted patrol units against protestors attending the World Can’t Wait demonstration in downtown Portland. Video footage shows mounted patrol officers charging into a crowd and an officer kicking a woman who was sitting on the sidewalk. Reports to the NW Center indicated that police, without warning, pepper sprayed a small group of protestors who locked arms in the street. Two individuals suffered breathing problems because of pepper spray and had to seek medical assistance. The incident commander refused to allow emergency medical personnel to respond within two blocks of the area. The Police Bureau videotaped portions of the event, downloaded YouTube footage of speakers at the opening rally and placed a plainclothes officer in the crowd.

**March 18, 2007** – Police used batons, pepper spray and mounted patrol units against protestors at an anti-war demonstration in downtown Portland. News footage of the event showed police repeatedly pepper spraying a man in the face as he yelled at them. Additional legal observer footage obtained by the NW Center shows mounted patrol officers chasing a handful of protestors, causing one man to fall to the ground. Video also shows that police used pepper spray and batons as they charged into a crowd to arrest an individual for kneeling in the street.

## ***Chemicals, Less-Lethals and Cameras: Problems Posed by Selected Portland Police Bureau Crowd Control Tactics***

The Portland Police Bureau tactics chronicled above raise serious concerns about how the Bureau responds to First Amendment assemblies. The NW Center and the Portland NLG find the Bureau's repeated use of pepper spray and less lethal impact munitions unacceptable due to the risks posed by these weapons in crowd settings. Finally, the Bureau's video surveillance at demonstrations also raises legitimate fears of illegal surveillance in light of the Bureau's history of spying on political groups in Portland.

### **Pepper Spray**

Pepper spray causes upper respiratory inflammation, and it “may have detrimental effects on people with preexisting respiratory problems.”<sup>44</sup> A University of Texas study of in-custody deaths following pepper spray use concluded that exposure to pepper spray was a contributing cause of death in 2 of the 63 fatalities.<sup>45</sup> Both cases involved people with asthma.<sup>46</sup> In addition, the Ninth Circuit has held that pepper spray is a “dangerous weapon” under criminal sentencing guidelines because it is “capable of inflicting death or serious bodily injury” when used against individuals with asthma.<sup>47</sup>

Pepper spray also poses greater risk to children, the elderly and people with chronic lung disease and certain eye conditions.<sup>48</sup> In addition, “Most people cannot physically keep their eyes open after being sprayed ... unless they actually hold apart their eyelids with their fingertips. Fear and disorientation often result from this temporary blindness.”<sup>49</sup> Though this may be appropriate when an arrestee poses a threat of imminent injury to an officer, it is dangerous and inappropriate in a crowd control situation, because pepper “can induce a state of panic in the crowd”<sup>50</sup> Moreover, pepper spray poses a risk to innocent bystanders because it is difficult to contain once it is dispersed. These risks led at least one expert to conclude that “that use of pepper spray for crowd control is inconsistent with good public health policy.”<sup>51</sup>

### **Less Lethal Munitions**

Impact munitions stun or otherwise temporarily incapacitate an individual. Unfortunately, police departments have limited systematic information on the circumstances in which officers have used impact munitions or the physical effects such weapons have on people in the field.<sup>52</sup> A 2004 survey of law enforcement agencies' use of impact munitions in 373 incidents revealed that 8 individuals died as a result of their use.<sup>53</sup> In most of the deaths, police fired on individuals who were less than 30 feet away.<sup>54</sup> Though safer “less-lethal” technologies have since been developed, this study confirms these weapons are not ‘less lethal’ in a literal sense “because none can be guaranteed to avoid serious injury or death.”<sup>55</sup> For example, in 2004, Boston police killed an innocent bystander when they shot rubber bullets to disperse a crowd.<sup>56</sup>

## Surveillance

The Portland Police Bureau has a history of conducting surveillance on political activists. The Police Bureau kept files on suspected communists and labor radicals between the first and second World Wars.<sup>57</sup> In 2002, boxes of surveillance records surfaced that showed that police kept files on political activists and groups from the 1960s to early 1980s.<sup>58</sup> By law, police should have destroyed those files in 1981. Moreover, in 1992, the Portland Police Bureau sent two undercover officers to a Peace and Justice Works meeting where the group discussed police accountability.<sup>59</sup> In 1996, a judge ordered the Bureau to destroy a report based on the infiltration and to have police supervisors and the city attorney review all files created by the criminal intelligence unit.<sup>60</sup>

Oregon law forbids law enforcement agencies from collecting or maintaining information about the political, religious or social views of groups or individuals unless *it directly relates to a criminal investigation and there are reasonable grounds to suspect the person or group might be involved*.<sup>61</sup> Though the law has been on the books since 1981, Portland officers continue to engage in several activities that may violate the law, including videotaping demonstrations, visiting web sites to collect information about protests, and placing plainclothes officers in the crowd. These activities threaten the protected First Amendment activities of demonstrators because they pose a substantial risk of chilling free speech.

## ***Safeguarding Free Speech: Seven Recommendations to Improve Police Responses to Public Dissent***

### ***1. Officers shall not use pepper spray at First Amendment assemblies***

The Bureau's current crowd control policy allows officers to use chemical agents to disperse a crowd when officers encounter "actions that prevent or attempt to prevent a member's attempt to control a subject, *but do not involve attempts to harm the member*."<sup>62</sup> Even more troubling, the Bureau's written policy on pepper spray states that officers can use it *against individuals who are merely passively resisting*.<sup>63</sup>

In addition, the Portland Police Bureau policy on use of force specifies the type of force officers may use when they encounter different levels of resistance from an arrestee. For example, the current policy includes "tensing muscles" as an example of physical resistance, which authorizes an officer to use pepper spray.<sup>64</sup> Unfortunately, the Bureau's use of force policy focuses on interactions that occur when an officer attempts to arrest or control a single individual—not on efforts to control a crowd. Thus, current policy fails to account for situations where individuals subject to arrest during a First Amendment assembly take specific nonviolent actions, such as locking arms with other individuals, to show they intend to passively resist and do not pose a risk of injury to officers. The policy also fails to take into consideration the airborne nature of pepper spray, that it is difficult to contain, and is therefore highly dangerous to individuals who are not targets.

The current policy ignores the likelihood that police will escalate the confrontation when they deploy pepper spray in a crowd setting. Pepper spray leaves demonstrators upset and frightened and increases the chaotic nature of the situation, which in turn leads the police to respond with even greater force. In addition, when police indiscriminately use pepper spray at a political demonstration, participants and the public alike can easily perceive their actions as

punishment for engaging in public dissent. Therefore, the Bureau should eliminate the use of pepper spray at First Amendment assemblies, due to the risks of causing extreme pain, breathing problems and panic, and the substantial likelihood that it will impact innocent bystanders and escalate a chaotic situation.

**2. *Officers shall not use less-lethal munitions at First Amendment assemblies.***

The Bureau's current crowd control policy makes no mention of impact munitions, despite the fact that officers have engaged in high-risk behavior by firing less lethal weapons in crowd situations on numerous occasions and despite the Bureau's many promises to address this issue. The Bureau's current use of force policy authorizes the use of impact munitions when an officer has encountered aggressive physical resistance, defined as actions of attack or threat of attack, coupled with the ability to carry out the attack, which may cause physical injury.<sup>65</sup> However, that policy only addresses interactions when officers are attempting to arrest or control a single individual—not efforts to control a crowd.

Police place innocent bystanders at risk of severe harm when they use impact munitions in a crowd setting, as demonstrated when Boston police killed a bystander at a sports celebration in 2004. The Bureau's own policy on less lethal weapons recognizes, "*[l]ess lethal munitions are not intended to produce deadly effects, but just as with other impact weapons, they can cause serious injury or death.*"<sup>66</sup> The risk of death or serious bodily injury posed by these weapons demands that police officers refrain from using them during First Amendment assemblies. Moreover, as with pepper spray, the use of impact munitions inevitably increases crowd tension and can lead a crowd to believe the police are punishing them for engaging in political expression.

**3. *The Bureau should abolish the use of horses for crowd control at First Amendment assemblies.***

The Bureau's current crowd control policy provides that a mounted patrol officer can assist in the arrest of an individual in a crowd.<sup>67</sup> The Bureau should eliminate this practice because horses, due to their size, strength and speed, pose a risk of serious physical injury when used in crowds—especially because horses could panic and become out of control. Even if officers take care to avoid harming people and are able to maintain control of their horses, the sheer imposing size and power of horses can cause individuals in a crowd to panic, further increasing the chances of injury.

**4. *The Bureau shall not photograph or videotape protestors engaging in First Amendment activity and will not place plainclothes officers in the crowd.***

The Portland Police Bureau's current crowd control policy states that officers may videotape public events to assist in detecting and prosecuting crimes, to document officers' performance and for management review – so long as the taping does not violate state law.<sup>68</sup> Former Portland Police Chief Derrick Foxworth has justified this practice by stating, "This recording has not been surreptitious, it has captured only the publicly-displayed behavior of officers and participants, and it has occurred only at events that were overtly policed by uniformed officers."<sup>69</sup> However, state law clearly forbids law enforcement agencies *from collecting or maintaining* information about the political, religious or social views of groups or individuals unless it relates to a criminal investigation.<sup>70</sup>

Moreover, government activity that even indirectly inhibits the exercise of free speech may run afoul of the First Amendment. Even when police have a legitimate interest in gathering intelligence to anticipate future criminal activity, they do not have unbridled power to do so by any and all means. Rather, their power is circumscribed by the federal Bill of Rights.

Police videotaping and plainclothes surveillance of protest activity poses a substantial probability that the surveillance will chill the exercise of First Amendment rights. The United States Supreme Court has repeatedly recognized that to compel an individual to disclose political ideas or affiliations to the government is to deter the exercise of First Amendment freedoms. As a result, the Portland Police Bureau should permanently abolish its videotaping policy.

**5. *The Bureau, to the extent possible, should respond to unforeseen demonstrations that take place on sidewalks, streets or in public parks in the same manner as events that have been coordinated with the Bureau beforehand.***

As the latest protests in downtown Portland have shown, clashes between police and protestors often erupt when protestors take an unplanned route. If protestors' only illegal conduct is that a demonstration temporarily obstructs traffic, the Bureau should, to the extent possible, redirect traffic to safely facilitate the First Amendment activity.

This approach is not without precedent. In response to a civil rights suit, the City of Oakland, California has adopted this provision in its crowd control policy. Moreover, as a practical matter, this approach may result in less traffic disruption than would result from a large mass arrest in the street or even several targeted arrests, which often lead to an unnecessary and avoidable stand off between police and law-abiding protestors.

**6. *The Bureau's crowd control policy should have clear language indicating when police can declare an unlawful assembly and the methods they must use to declare an assembly unlawful.***

In the vast majority of crowd situations, only a small number of individuals will engage in unlawful conduct. If individuals in the crowd engage in unlawful conduct, the Bureau should, to the extent reasonably possible, respond by citing or arresting those individuals--not by issuing a general order to disperse. If the Bureau is able to target specific lawbreakers with a minimum use of force, the event as a whole can continue, thus eliminating the need for large-scale dispersal procedures that pose a risk of harm to officers and to innocent individuals.

If the Bureau does need to make a general order to disperse, that order must be clearly audible and understandable by the crowd. Though current Bureau policy provides that officers should "always have a sufficient loudspeaker capability to address all parts of the crowd," the chronology above demonstrates that the Bureau has repeatedly failed to make audible and understandable dispersal orders.<sup>71</sup>

In addition, the Bureau should give individuals in the crowd adequate time to comply with orders before officers employ force. Current Bureau policy provides that officers can physically force a crowd to disperse if the crowd disobeys a dispersal order. However, the policy does not require warnings first. In the wake of civil rights lawsuits, both Washington D.C. and Oakland

altered their crowd control policies to require that officers give warnings to a crowd and allow time for individuals to comply. This approach makes sense because, at large events, individuals may be trapped between the crowd behind them and the police in front of them and may not be able to move quickly in response to a police order.

### **7. Officers should not penetrate a crowd to make an arrest unless the targeted individual has engaged in serious criminal conduct.**

The Bureau's existing crowd control policy states it is sometimes necessary to send "a wedge of uniformed officers" into a crowd "to rescue an intelligence officer, the victim of an assault or to arrest lawbreakers of different types."<sup>72</sup> It goes on to state, "if this technique is used, consider the effect on innocent people who might be in the crowd. Have sufficient force on hand to deal with the entire crowd, should it become necessary."<sup>73</sup>

The current policy recognizes that when officers penetrate a crowd, not only do they pose a risk to innocent bystanders, they also escalate the tension of the crowd as a whole. During the March 18, 2007 anti-war rally, officers used pepper spray and batons when they plunged into a crowd to arrest an individual for disorderly conduct. Similarly, during the World Can't Wait demonstration, one officer kicked a protestor who was sitting on the sidewalk and another officer shot rubber bullets when they charged into a crowd to arrest an individual. The arrestee was later acquitted. These incidents demonstrate that, to avoid unnecessary injury and escalation, officers should be more selective about when they charge into a crowd. Officers should attempt the least combative option, such as issuing citations or tickets where necessary, and recognize the impact of making selective arrests at a political demonstration.

## **Conclusion**

Portland is home to a vibrant and diverse activist community. As a result, large demonstrations regularly take place in our city. Unfortunately, the Portland Police Bureau continues to respond to these events with overly aggressive tactics that endanger demonstrators and chill First Amendment rights. The Northwest Constitutional Rights Center and the Portland Chapter of the National Lawyers Guild undertook this study to address this issue. We hope that our efforts spur the Bureau to finally reform its crowd control policy and to avoid conflicts at First Amendment assemblies in the future.

## **Footnotes**

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<sup>1</sup> See John M. Kenny, et. al., *Crowd Behavior, Crowd Control and the Use of Non-Lethal Weapons*, Institute for Non-Lethal Defense Technologies, January 2001.

<sup>2</sup> Maxine Bernstein, *Report Due Today on Police Use of Less-Lethal Guns Against Crowd*, THE OREGONIAN, Nov. 18, 1998, at B5.

<sup>3</sup> Maxine Bernstein, *Moose Lashes Out at Beanbag Critics*, THE OREGONIAN, Nov. 19, 1998, at A1.

<sup>4</sup> Maxine Bernstein, *Officers Question Tactics in Handling Protest*, THE OREGONIAN, May 10, 2000, at A1; Portland Police Bureau Manual of Policy and Procedure, 1010.20 Physical Force; 1050.00 Less Lethal Weapons and Munitions, January 2007.

<sup>5</sup> Portland Copwatch, *Portland Police Increase Political Repression*, PEOPLE'S POLICE REPORT # 17, April 1999, at: <http://www.portlandcopwatch.org/PPR17/iraqdemo.html>.

<sup>6</sup> David R. Anderson, *Peace Protestors Accuse Portland Police of Spying*, THE OREGONIAN, Oct. 6, 1999, at B2.

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- <sup>7</sup> Portland Copwatch, *Mounted Patrol and Riot Police Attack Peaceful Protest*, PEOPLE'S POLICE REPORT #19, December 1999, at: <http://www.portlandcopwatch.org/PPR19/copsatmumiamarch.html>.
- <sup>8</sup> Philip Dawdy, *Strong Arm Tactics*, WILLAMETTE WEEK, Oct. 27, 1999, at: [www.wweek.com/html/crime102799.html](http://www.wweek.com/html/crime102799.html).
- <sup>9</sup> *Id.*
- <sup>10</sup> Philip Dawdy, *Panic in Portland*, WILLAMETTE WEEK, May 3, 2000, at: <http://www.wweek.com/html/urbanpulse050300.html>.
- <sup>11</sup> Robin Franzen, *Irate Crowd Berates Police*, THE OREGONIAN, May 10, 2000, at A1.
- <sup>12</sup> Mark A. Kroeker, *May Day Final Report*, Portland Police Bureau, June 28, 2000.
- <sup>13</sup> Maxine Bernstein, *Officers Question Tactics in Handling Protest*, THE OREGONIAN, May 10, 2000, at A1.
- <sup>14</sup> *Id.*
- <sup>15</sup> Kroeker, *supra* note 12, at 3.
- <sup>16</sup> Portland Copwatch, *Police and Crowds*, PEOPLE'S POLICE REPORT #23, April 2001, at: <http://www.portlandcopwatch.org/PPR23/crowdcontrol23.HTML>.
- <sup>17</sup> Kroeker, *supra* note 12, at 5.
- <sup>18</sup> Portland Copwatch, *Police Attack September 26 Street Gathering*, PEOPLE'S POLICE REPORT #22, December 2000, at: <http://www.portlandcopwatch.org/PPR22/S26.HTML>.
- <sup>19</sup> Mark A. Kroeker, *May Day Protest Follow-up Report*, Portland Police Bureau, January 18, 2001.
- <sup>20</sup> Maxine Bernstein, *Police Tactics Rekindle Criticism of the Police*, THE OREGONIAN, Aug. 24, 2002, at A1.
- <sup>21</sup> Portland Police Bureau Manual of Policy and Procedure, 1010.20 Physical Force; 1050.00 Less Lethal Weapons and Munitions, January 2007.
- <sup>22</sup> Bernstein, *supra* note 20.
- <sup>23</sup> *Id.*
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- <sup>25</sup> Bernstein, *supra* note 20.
- <sup>26</sup> *Id.*
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- <sup>30</sup> Robin Franzen, *Protestors' Suit Claims Rights Violated*, THE OREGONIAN, Oct. 26, 2002, at C2; see also *Marbet v. City of Portland*, 2003 U.S. Dist. LEXIS 25685 (D. Or. 2003).
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