



Seattle
Office of Police
Accountability

DIRECTOR'S CERTIFICATION MEMO

TO: ASSISTANT CHIEF THOMAS MAHAFFEY
PATROL OPERATIONS BUREAU

DATE: APRIL 8, 2021

CAPTAIN MICHAEL TEETER
TRAINING UNIT

CAPTAIN BRIAN STAMPFL
NORTH PRECINCT

ACTING CAPTAIN JOHN BROOKS
COMMUNITY RESPONSE GROUP

FROM: DIRECTOR ANDREW MYERBERG *AM*
OFFICE OF POLICE ACCOUNTABILITY

SUBJECT: DIRECTOR'S CERTIFICATION MEMO 2020OPA-0583

INFORMATION FOR THE REVIEWER:

This Director's Certification Memo (DCM) represents the opinion of the OPA Director regarding the misconduct alleged. The DCM, while based upon the evidence and information contained in the case file, should not be considered part of the investigation process. It should be viewed as an aid to your evaluation of the Director's findings. ***Please review the case file in Blue Team if you have questions or further information is needed.***

The Director's recommended finding for an allegation contained in this investigation is Sustained, a Discipline Meeting will be scheduled.

CASE IDENTIFICATION:

180 Date: 4/12/2021		OPA Case Number: 2020OPA-0583
Reported Date: September 7, 2020		General Offense Number: 2020-261072
Incident Date: September 7, 2020	Incident Location: 2949 4th Ave S Seattle WA 98134	
Complainant: Multiple Complainants	Subject: Subject #1 (Molotov cocktail suspect) Subject #2 (Red-shirted male) Subject #3 (██████████) Subject #4 (Red-shirt and tan beanie) Subject #5 (██████████) Subject #6 (██████████) Subject #7 (Blue denim and shorts)	



Named Employee #3

Allegation(s):		Director's Findings
# 1	6.010-POL - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director's Findings
# 1	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray...	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #6

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Management Action)

Named Employee #7

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Management Action)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Management Action)

Named Employee #8

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Management Action)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Named Employee #9

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Management Action)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Management Action)

EXECUTIVE SUMMARY:

Numerous complainants alleged misconduct by named and unknown SPD employees during a Labor Day demonstration at the Seattle Police Officer's Guild (SPOG) headquarters. In general, the complaints alleged that



officers dispersed the crowd without cause, used excessive force in doing so, and used undercover officers to commit acts of violence justifying the dispersal.

SUMMARY OF INVESTIGATION:

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis police officer. These protests were unprecedented in scope and were directed at law enforcement.

I. Background and Incident Plan

The specific incidents at issue in this case arose out of a demonstration associated with the group Every Night Direct Demonstration (ENDD) advocating for the disbanding of unions representing police officers. This event, which was advertised on social media, was an un-permitted but pre-planned demonstration for which SPD created an Incident Action Plan (IAP). Under the IAP, Named Employee #1 (NE#1), a captain, was designated as the incident commander. A lieutenant, not named in this investigation, acted as the Operations Section Chief.

In the IAP, NE#1 wrote that his intent was to: "facilitate free speech and assembly whenever possible, while preserving order and protecting persons and property. My expectation is to maintain a minimal police presence at a safe distance to facilitate the protester's lawful conduct." In describing previous protest activity, NE#1 said that typically many demonstrators "remained peaceful," but that in many protests, a contingent "committed significant property destruction and/or vandalism against public and private property."

In the event that members of the crowd were to engage in violence, NE#1 stated his expectation that SPD personnel "respond by identifying, isolating, and arresting the offenders if/when it is safe and feasible so those activities are not allowed to corrupt the lawful conduct of others." NE#1 stated that the crowd would only be dispersed if disorder became widespread such that individual enforcement was no longer safe or feasible, or if there was an imminent risk to public safety, including the risk of "significant" property destruction. After the crowd was dispersed such that any danger had been controlled, NE#1 stated that he expected SPD personnel to return to a crowd management posture.

II. Narrative of Incident

The demonstration crowd, which was estimated at approximately 200 people, gathered at the International District light rail station beginning at approximately 4:43 PM on September 7. Over the course of the next hour, the demonstration group marched in an organized fashion south on 4th Avenue toward SPOG headquarters, which is on the west side of 4th Avenue. The protesters marched in a bloc with vehicles in a line in front and behind. Demonstrators were observed with signs, umbrellas, improvised shields and sticks or batons. Some wore all black clothing, helmets, goggles, and backpacks while others dressed in plain clothes.

When the group arrived at SPOG headquarters, there was no visible police presence. Police were deployed in the parking lot behind the SPOG building and a neighboring building, with the intent that they would not interact with the crowd unless required for crowd management or control. A wire fence had been erected around the SPOG building. At approximately 5:53 PM, the crowd fully blocked 4th Avenue South and the front rank of protesters facing the SPOG building deployed umbrellas and grouped in a line across the entrance to the building parking lot. Music could be



heard playing from within the SPOG building. Third party video showed isolated incidents of individuals in the crowd throwing objects and garbage over the wire fence.

SPD's Computer Assisted Dispatch (CAD) report of the incident, which collated updates added to the call's incident number, reflected that, at approximately 6:07 PM, SPD's Intelligence Unit reported that the "signal to act" within the crowd would be a plume of white smoke. At 6:09 PM, Intelligence reported that a male in the crowd wearing tan clothing and a pink bandana possessed approximately twelve Molotov cocktails in a box of Corona beer. OPA's analysis of security video after the fact showed an individual, referred to hereafter as Subject #1, visible at the right of the crowd and carrying a box matching later photographs of the box of Molotov cocktails recovered at the incident scene. This individual was, in fact, wearing a dark blue or gray hoodie and tan gloves. Two minutes after the report, the call was updated to reflect that there was probable cause to arrest Subject #1. The Operations Section Chief communicated with Intelligence to direct teams of bicycle officers toward Subject #1 and make a targeted arrest.

BWV of the incident from dozens of officers captured the incident as it evolved. OPA's summary is primarily based on BWV and third-party video, supplemented where appropriate by written reports from the officers as well as radio traffic and the CAD. To promote readability, these summaries have largely been combined in the section below. Later sections note particular areas of interest in specific documents and recordings examined by OPA.

A. Initial Crowd Contact and Perimeter

Bicycle squads under the command of a lieutenant conducted the arrest movement. At the lieutenant's order, several squads of bicycle officers rode out from behind the buildings and made contact with the front rank of protesters. All the Named Employees except NE#1, the Incident Commander, took part in this movement. BWV of bicycle officers as well as third-party video posted by demonstrators on social media reflected that as they approached, officers were shouting "move back."

Video from a sergeant who led the arrest maneuver showed that, when officers contacted the crowd, a man in tan clothing matching the description and appearance of Subject #1 was visible. However, as officers attempted to physically contact and arrest him, members of the crowd formed a wall with their bodies and prevented them from doing so. As officers attempted to arrest Subject #1, they also separated the crowd into two main groups, allowing officers to establish a perimeter and begin moving the crowd north on 4th Avenue. At least three arrests occurred during this initial interaction between officers and the crowd. Also during this section of the incident, a large plume of white smoke was visible from within the crowd. At the time, the CAD log and radio reports suggested that this smoke was "bear spray." It was later determined to be a fire extinguisher.

Named Employee #2 (NE#2), Named Employee #9 (NE#9), and others including Named Employee #4 (NE#4), a sergeant, made initial contact with the group of demonstrators. On contacting the demonstrators, they dismounted their bicycles and pushed using the frames of the bicycles to separate the crowd. The crowd fell back into two groups, one of which moved south along 4th Avenue while the other, larger group moved across the street to the east and north. NE#4 directed that the officers form a perimeter facing east.

As NE#4 directed officers to form a perimeter, the majority of the crowd fell back in a loose group and maintained distance from officers. One individual, a woman, ran in front of NE#4 and filmed at close range. BWV showed that NE#4 shouted "move back" and sprayed her with OC. The woman ran backward and fell. Approximately 7-10 demonstrators, including another female individual filming, ran up to the fallen woman.



NE#4 and the officer line continued to advance east. The group of demonstrators surrounding the fallen woman was in their line of advance. NE#4 and the other officers continued to direct demonstrators to move back. As NE#4 moved forward, the individual who was filming remained in place. NE#4 sprayed her with OC and she turned away and ran. Almost immediately after NE#4 deployed OC at the second woman, his BWV showed that a male in a red sweatshirt, referred to hereafter as Subject #2, threw an object in his direction. NE#4 deployed OC at Subject #2 in two bursts. It appeared that the bursts were ineffective. NE#4 continued to direct the formation of a perimeter. As more officers arrived, NE#4 pointed out Subject #2 and ordered officers to form a crossbow formation. He directed them to arrest Subject #2. Over the next minutes, NE#4 continued to direct his squad in doing so.

B. Arrests

As this was occurring, another group of officers was engaged in pushing the other part of the crowd south. This group of officers included Named Employee #5 (NE#5) and Named Employee #6 (NE#6). Subject #1 (the Molotov cocktail suspect) appeared to be part of this group, but, after the initial contact, officers appeared to lose sight of him as demonstrators with shields attempted to prevent the officers from making arrests or moving the line. Several officers (not named in this investigation) deployed OC when demonstrators resisted being moved. An individual with a leaf blower, Subject #3, was present in this group. BWV showed Subject #3 using the leaf blower to blow OC back toward the officers and away from the group.

An officer (not named) took Subject #3 to ground to arrest him. BWV showed that when Subject #3 went to ground he had his left arm under his body as he struggled. NE#5, who was nearby, went to assist. He attempted to grab at the Subject #3's arm to pull it out from under his body, and NE#5 could be heard on BWV shouting at the subject to "get your fucking hands out."

As this was occurring, NE#6, who was nearby, saw NE#5 and other officers attempting to gain control of Subject #3's arms. NE#6 went to assist. When he arrived on Subject #3's left side, he was on his front with his left arm under his body and face, visibly struggling with officers. NE#6's BWV recorded NE#6 striking Subject #3 once in the face with a closed fist. This caused Subject #3 to move his arm out from under his body to shield his face. NE#6 and another officer took control of his left arm and placed it behind his back while officers on Subject #3's right side did the same with his right arm.

After the arrest was complete, NE#6 left the area. NE#6's BWV showed that other officers had established perimeters across 4th Avenue S facing south, east, and north. Most of the crowd was on the north side, with scattered groups to the south and east. The groups to the east began to walk north alongside the perimeter established by NE#4, joining the largest group of demonstrators to the north.

C. Arrests During Initial Dispersal

At this time, NE#4 was directing the arrest of Subject #2, the individual in red who threw an object at him. He pointed out Subject #2 and directed bicycle officers to perform a "crossbow" maneuver, a method of performing a targeted arrest within a group. Subject #2 was within a group of demonstrators who were walking north and appeared to be walking with them. NE#4 directed his squad to move and then rode his bicycle toward the subject. When he got close, NE#4 deployed a burst of OC in Subject #2's direction. The group, including Subject #2, began to run, and Subject #2 eventually attempted to sprint into the road. Several bicycle officers in the area, including NE#4, attempted to grab



Subject #2 but were unsuccessful. Subject #2 ran into the street where he was grabbed by several bicycle officers, ultimately falling to the ground. NE#4 directed the squad to “circle up” around Subject #2 and the arresting officers but did not use any more force.

At the same time NE#6 was riding his bicycle when he observed foot officers attempting to arrest one or more subjects. NE#6 rode in to assist. In doing so, he contacted a man wearing a red shirt, a tan beanie, and red shoes (a different individual than Subject #2 and referred to here as Subject #4), as well as an individual in black. NE#6's BWV did not record the entirety of the contact due to camera angles, but it appeared that one or both of these individuals made contact with NE#6, causing him to fall off his bicycle.

BWV of one of the officers on foot showed NE#6 falling and another demonstrator falling on top of him. Simultaneously, Subject #4 kicked NE#6 in the head. Other officers who observed this took Subject #4 to ground and arrested him. NE#6 got up and arrested the person in black. After this arrest, NE#6 could be heard advising other officers that Subject #4 had just kicked him. He then re-mounted his bicycle and pedaled north slowly. BWV recorded him gasping in pain before he ultimately re-joined the police line.

D. Crowd Movement North and Shield Group

At this point, a significant part of the demonstration crowd had re-formed in a static position across 4th Avenue S, facing a group of bicycle officers who had begun forming a mobile fence line. The demonstration crowd was formed into a core group of individuals carrying shields in a phalanx-like formation, while others stood in line on either side of them. The police line, which included all of the Named Employees under the direction of NE#4 and other sergeants, was formed into a mobile fence line of bicycle officers with backing squads in a loose double column behind the fence line. Two of the Named Employees – NE#2 and Named Employee #9 (NE#9) – were in the backing squad.

NE#4 deployed a blast ball at the demonstrators who were in a shield wall. BWV reflected that officers were shouting “move back.” On command, NE#2 and NE#9 rode up to the protesters carrying plastic shields and conducted a “power slide.” This tactic involved both NE#2 and NE#9 dismounting their bicycles while still in motion and sliding the rear wheel of their bicycles forward until the bicycles were perpendicular to their initial line of travel and side-on to the crowd. As trained, this technique is intended to allow SPD officers to rapidly form a mobile fence line with their bicycles in front of a crowd. However, generally a power slide is not intended to be itself a method of using force.

Both NE#2 and NE#9's BWV showed that the rear wheel of their bicycles impacted the legs of members of the crowd. When NE#2 and NE#9 made contact with the crowd, several individuals were holding umbrellas out horizontally as shields, and NE#2 and NE#9 grabbed them. NE#2 used the frame of his bicycle to push crowd members back. After seizing the umbrella, NE#2 deployed at least one burst of OC spray at the individual whose umbrella he had seized. The individual moved back and behind another demonstrator who still had an umbrella. NE#9 used his bicycle's rear wheel to strike the plastic shields being used by demonstrators. After this initial contact, the demonstration crowd began moving back. NE#2 and NE#9 re-joined the line of officers, which began moving after the crowd started to fall back.

Two groups of demonstrators, one with plastic shields formed in a shield wall on the west side of 4th Avenue and another made up of persons with their arms linked on the eastern side, moved back in an organized fashion at a slow walk. Behind these groups, the remainder of the demonstrators walked north at a steady pace. The line of officers advanced at the same speed as the two organized groups of demonstrators. During this time, BWV recorded a



dispersal order being broadcast audibly. BWV also showed members of the crowd throwing objects at officers, and officers deploying at least two blast balls and OC spray.

The group carrying shields moved north more slowly than other demonstrator groups, and the line of SPD officers began to distort with the right (east) side of the line advancing faster than the left. The officers near the shield group came into closer contact with demonstrators than elsewhere. NE#5, who was in this group, at one point could be heard yelling at the group to "turn around and go!" NE#5, who was walking beside his bicycle, used his bicycle's front wheel to strike the bottom shield and legs of a demonstrator. His BWV depicted another officer to his right, NE#9, use the same tactic. This caused one demonstrator to fall before being caught by other demonstrators and caused the shield wall group to break up and begin falling back more quickly.

NE#4 was also in close contact with this group. His BWV showed him deploying OC at the group. It appeared based on BWV that NE#4 sprayed at least two demonstrators with OC. Subsequently, other officers seized some of the shields that this group was using.

Shortly after this interaction, NE#5 fell back slightly because the SPD line had become further distorted, with some demonstrators to NE#5's left and behind him. Supervisors could be heard directing officers to dress the line and ensure that the crowd kept moving. NE#5's BWV showed a group of approximately three demonstrators walking backward with arms linked. One of them was carrying a large umbrella pointed toward officers. Another demonstrator in this group, referred to hereafter as Subject #5, was wearing gray pants and a black tactical vest. NE#5 moved in to seize the umbrella. As he did so, he appeared to raise the front wheel of his bicycle and strike one of the three demonstrators.

BWV of another officer captured NE#5 moving in and striking the demonstrator with his bicycle's wheel. As NE#5 seized the umbrella, Subject #5 fell. As he did, Subject #5 raised his hand and appeared to strike or grab NE#5 around the facemask and shoulder. NE#5 also went down, and other officers moved in to assist.

NE#5's BWV also captured the interaction, although given positioning it did not show the contact between Subject #5's arm and NE#5. As NE#5 got close to the individual, there was an audible impact and jostling, and NE#5 could be heard shouting "fuck you, motherfucker." NE#5 fell backward, and other officers moved in. He briefly righted his bicycle and then moved in to help another officer roll Subject #5 onto his front. As he did so, NE#5 said "you fucking hit me, motherfucker. You want to fuck with me?" As NE#5 held Subject #5's hands behind his back, the other officer finished handcuffing him. After the cuffs were double-locked, NE#5 and the other officer sat Subject #5 up.

NE#5 stood by for approximately a minute until the sergeant, NE#4, arrived to screen the arrest. NE#5 told NE#4 that Subject #5 hit him in the face and identified himself as the victim of an assault. NE#4 told him to have another officer do the arrest report. Afterward, BWV recorded NE#5 informing another officer that Subject #5 hit him while he was on the ground.

E. Crowd Push North

During the arrests and the dispersal of the shield wall group, SPD halted its line so as not to become separated. The crowd continued to move north for approximately a block, causing SPD's line to become separated from the demonstrators. After approximately a block, the demonstration group stopped and formed a line across 4th Avenue S on the north side of the intersection with Lander Street.



SPD officers, including NE#3, NE#4, NE#6, Named Employee #7 (NE#7), and Named Employee #8 (NE#8) formed a line with others. On command, they rode forward to cross Lander Street and continue pushing the crowd to complete the dispersal. After crossing Lander and before making physical contact with demonstrators, the officers dismounted and began walking their bicycles while shouting "move back." BWV of several officers showed that members of the crowd largely turned away and began walking at a slightly higher than normal walking speed as directed, although some continued to face the police line. BWV also showed objects being thrown, including rocks, cardboard signs, and garbage.

NE#8 participated in the crowd movement northward on 4th. He was walking his bicycle near the far right of the police line. Several individuals including an individual in a blue shirt and khaki shorts, Subject #7, and a man in navy blue denim were walking in a group with arms linked. Some faced forward while others, including the man in navy, were walking backward. This group was notably slower than other parts of the crowd. This caused the right of the SPD line to become pushed back relative to other sections of the line, and NE#8 and other officers could be heard on BWV telling the group of arm-linked individuals to move faster, turn around, or leave the area. Eventually, the man in navy as well as Subject #7 did so.

Immediately after the man in navy turned around, NE#8 lifted his bicycle's front wheel off the ground and struck the man in navy in the back with the tire. It did not appear that NE#8 did so with significant force because the man did not appear to stagger or otherwise react. He continued to walk away.

As this was occurring to the right, closer to the center of the line approximately four individuals in black began to walk backward with linked arms in a group, as the other group had been doing. NE#3, who was in front of these individuals, told them to move back. One of the individuals, Subject #6, shouted at NE#3 that he "can't go any faster." NE#3 directed him to turn around. Subject #6 did not. NE#3 grabbed him by the shoulder and pulled him down to the ground. Subject #6 went down on his back, partially over a bicycle. Another officer moved the bicycle, and NE#3 completed the arrest.

During the same time as the interaction leading up to this arrest, NE#6 was walking in line with other officers. He was near the far right of the SPD line, to NE#3's right and slightly ahead and to the left of NE#8. NE#6 could be heard ordering demonstrators to move and to get out of the area. At one point, NE#6 bumped a woman with the front tire of his bicycle, causing her to jog. NE#6 seized another demonstrator's umbrella, and the demonstrator threw the frame at him. As this was happening, a demonstrator from the group NE#8 had been interacting with walked up behind and to the right of NE#6. This demonstrator appeared to bump into NE#6 or his bicycle. NE#6's BWV was jostled and recorded a sound consistent with an impact.

NE#6 stopped walking. As he did so, he planted the front tire of his bicycle on the ground and swung the rear wheel up and forward, striking the demonstrator who had appeared to bump into him. That demonstrator staggered and moved away. Another, Subject #7, began walking in front of NE#6. Subject #7 faced away from NE#6 and walked at approximately the same speed as all the other demonstrators. NE#6 lifted the front tire of his bicycle and struck Subject #7 in the back. NE#6 shouted "leave, get out of the area." Subject #7 continued walking at the same pace. There were several individuals in front of him walking at approximately the same speed. After about 20 seconds, NE#6 pushed Subject #7 again and told him to "get out of the area."



At approximately this time, NE#3 arrested Subject #6 as detailed above. As other officers moved in to assist, it appeared that Subject #7 either attempted to interfere in the arrest NE#3 was making, or became entangled with the arresting officers accidentally. One of those officers arrested Subject #7. NE#6, who was nearby, moved in to assist with this arrest. They rolled Subject #7 onto his front and handcuffed him.

NE#7 also participated in the crowd movement. He was near the far left of the line walking his bicycle. Several minutes into the movement, at about the same time as the incidents detailed above, SPD's line maintained several feet of separation from the trailing edge of the crowd with the exception of the group interacting with NE#6 and NE#8. Officers, including NE#7, continued to shout: "move back."

A few individuals, including one male wearing light blue denim clothing and a baseball cap (a different individual than Subject #7), were walking behind the main group and near the police line. An officer to NE#7's right appeared to bump this individual with the front tire of his bicycle, causing him to hop and briefly grab his ankle before continuing to walk. The individual moved to walk in front of NE#7 and, as he did so, appeared to slow down slightly until he was behind the front wheel of NE#7's bicycle and to NE#7's right, with the bicycle between them. NE#7 appeared to slow down as well and move behind the denim-wearing individual. At the time, the crowd also appeared to be slowing down slightly. NE#7 shouted, "move back," and began to walk behind the individual. He shouted "move, move" and then struck the individual in the leg with the front wheel of his bicycle. A few seconds later, NE#7 pushed him when he again got close. The two walked together for about 30 seconds. NE#7 appeared to push another individual and then again pushed the individual in denim. Eventually, the movement of the crowd caused the individual to move away.

F. Push north and east on Holgate, discharge of Molotov cocktail, use of blast balls

After the above arrests, officers slowed to complete the arrests and dressed the line while the crowd continued to move north, creating as much as half a block of separation between the crowd and officers. After a few minutes, it appeared on BWV that the crowd began to slow and re-form. At around this time, officers rode their bicycles forward in a loose formation and re-formed the line closer to demonstrators. Over the next approximately five minutes, officers and the crowd moved north for two blocks with about 30 feet of separation between the two groups. During this time, dispersal orders from NE#1, the Incident Commander, were being broadcast through his car's loudspeaker.

NE#8 rode his bicycle in the front line during this movement. After a few minutes moving north, a supervisor (likely a sergeant) could be heard relaying instructions that to move the crowd "right on Holgate." A few minutes later, bicycle squads on the left moved forward along the edge of the crowd and began pushing them east toward the corner of 4th and Holgate. NE#8 and other officers on the right side also began to advance toward the rear edge of the crowd.

When he was in contact with the crowd, NE#8 dismounted his bicycle. There was an individual in front of him in a blue t-shirt carrying a sign and a woman in tan shorts filming. NE#8 drove the front wheel of his bicycle into the legs of the man in the blue shirt. NE#8 and other officers shouted for the crowd to "move back." The woman said "we're moving," and NE#8 responded "move the fuck back." The man in the blue t-shirt and the filming woman ran. Based on BWV, another officer directed the crowd to "run." Based on BWV, NE#8 then said "start fucking running."

At this point, a man in a tactical vest, gas mask, and maroon shirt was in front of NE#8. He and other demonstrators in the trailing edge of the group, which was now mostly confined to the sidewalk of 4th Avenue, continued walking north. Several in the group made obscene gestures at NE#8 and the other officers in response to instructions to run. NE#8 confiscated an umbrella from the group, and the man in maroon turned around to face NE#8.



As this was happening, someone in the crowd ignited a Molotov cocktail. It impacted in the middle of the street. The male in the blue t-shirt and the filming woman, as well as one officer on a bicycle, were near the Molotov when it ignited. All those near the flames ran away and the crowd became more bunched on the sidewalk.

NE#8 raised his bicycle onto its back wheel and attempted to strike the man in maroon with the front tire. The man grabbed the tire and pushed NE#8 back. There was a brief struggle before NE#8 fell back. Immediately after, several SPD officers deployed blast balls at the edges of the crowd, which was beginning to turn right on Holgate.

As NE#8 turned the corner, a demonstrator behind him and to his right with a bicycle appeared to stop and attempt to converse with another officer. NE#8 raised the tire of his bicycle and attempted to strike the man with it. It appeared on BWV that NE#8 struck the man's bicycle instead. NE#8 said, "move the fuck back." The man began to walk. NE#8 walked alongside him, grabbed his shoulder, and pushed while saying "get your ass moving, let's go" and "get your fucking ass moving." The man with the bicycle began to walk faster.

A supervisor called a momentary halt to the SPD line to allow it to re-form and for more of the crowd to pass. Once it did so, the line advanced again. NE#8 moved forward on foot with the others directing the crowd to move. He drove his bicycle's tire into the legs of one woman in a green shirt while saying "move" and "get going." That woman and two people near her began to run as well.

Ultimately, the SPD line pushed the crowd east on Holgate for a block before the crowd turned north on 6th Avenue S. SPD continued to push the crowd north to Judkins Park, where it largely dispersed. OPA's review did not indicate other significant incidents during this portion of the incident.

III. Complaints

OPA received numerous complaints regarding this incident both from members of the public who attended the march and demonstration, as well as those who observed it on one of several livestreams. Rather than articulate each complaint separately, OPA summarizes them as follows.

First, numerous complainants alleged that the initial action by SPD to enter the crowd was unprovoked. Many complaints characterized it as an attack by SPD on peaceful protesters. Some complainants alleged that SPD fabricated the presence of Subject #1 (the Molotov cocktail suspect) or planted an SPD employee within the crowd with Molotov cocktails as a pretext for violence. Relatedly, some protesters took issue with the fact that country music was playing within SPOG headquarters in the minutes prior to the dispersal. At least two complainants suggested that this was done to make light of the protest or the crowd dispersal that subsequently occurred.

Second, several complainants alleged that no dispersal order was given prior to SPD entering the crowd to conduct arrests.

Third, some complainants alleged that some or all of the arrests made during the protest lacked probable cause and were thus illegal. Relatedly, at least one complainant alleged that in conducting arrests, SPD officers improperly cut off and searched the backpacks of arrested persons or seized their property.



Fourth, several complainants alleged that SPD used excessive force, either generally or during arrests. At least one complainant alleged that SPD officers used force while pushing demonstrators who had no route of egress from their location. One complainant referenced "kettling," an alleged practice of trapping or surrounding demonstrators in a location and using force on them once there. This complainant also described kettling as "being herded."

Some complainants made specific allegations regarding the targeting of medics, legal observers, or specific demonstrators. At least one complainant alleged that officers committed misconduct by pushing or shoving retreating protesters on the basis that they were not leaving fast enough.

This investigation ensued.

IV. Video Evidence

OPA summarized BWV and third-party video evidence above. See Section I. In addition to that summary, OPA notes the following points of interest.

OPA obtained third-party video from a local independent journalist and livestreamer known as "Malcontentment Tango." The majority of this stream was consistent with the above summary. In the following places, drew information from the stream unavailable elsewhere. In large part, this is because "Malcontentment Tango" recorded using a camera on top of a tall pole, providing a top-down view of the incident.

During the initial demonstration gathering at SPOG, the "Malcontentment Tango" stream recorded country music playing from the SPOG building for approximately 1 minute and 9 seconds prior to SPD officers began to deploy.

The stream also captured video of foot officers conducting arrests in the parking lot prior to NE#6's arrival there. Subject #4, the man in red wearing a tan beanie, was visibly interfering in arrests. He appeared to assault at least one officer and potentially a member of the public. When NE#6 rode into the area, Subject #4 turned to face him in a fighting stance. NE#6 appeared to collide with Subject #4, causing NE#6 to go to ground at which time Subject #4 kicked him in the head.

Later, the "Malcontentment Tango" stream showed moment when SPD began moving the crowd north. See Section I(D) *supra*. During this section of video, "Malcontentment Tango" noted his impression that SPD did not appear to be "targeting" press or the National Lawyer's Guild legal observer teams as they had on a prior occasion. He also noted that some members of the crowd in front of him were walking as if it were a "Sunday stroll" and needed to pick up the pace. Shortly after this, an individual matching the description and earlier recording of Subject #1 (Molotov cocktail suspect) was recorded walking at the south edge of the crowd and conversing with another demonstrator. The two appeared to fist bump before Subject #1 walked off screen. The remainder of the stream was consistent with the summary above.

OPA also examined a video posted by SPOG (also referenced above). The video, which was a mix of security video from SPOG's own cameras and publicly released SPD BWV, was largely consistent with the summaries above. Notably, SPOG's security camera captured an individual believed to be Subject #1 carrying a Corona box. That individual matched the individual identified on the "Malcontentment Tango" stream conversing with another demonstrator.



OPA also examined footage by the livestreamer "RebellionBaby" and video from a member of the crowd provided to OPA. Those videos were consistent with the above summaries.

V. SPD Records

A. CAD Report

As noted, the CAD Report of this incident showed that SPD received reports that a person in the crowd had an "incendiary device." The initial description provided stated that the suspect was wearing tan and a pink bandana. OPA notes that this is not an accurate suspect description for Subject #1, who was wearing a dark blue hoodie and tan gloves. Intelligence provided updates over the next several minutes as to the probable location of the suspect, placing him seven individuals back from a yellow umbrella near where SPD officers contacted the crowd. Orders were given for bicycle officers to move in and attempt an arrest. Intelligence provided an updated suspect description which was an approximate match for Subject #1.

Over the next several minutes, the CAD reflected that the lieutenant acting as Deputy Operations Chief, the operational commander, directed officers to push the crowd north. This was approximately the same time as the initial push on the static demonstration line across 4th Avenue. About three minutes later, that lieutenant authorized the use of blast balls. Shortly thereafter, the CAD reflected that dispersal orders were being given "again." This was the first reference to a dispersal order and may coincide with the first dispersal orders audible on BWV during the northward push. Several minutes later, a lieutenant reported that a box of Molotov cocktails was recovered at SPOG.

B. Use of Force Reports

OPA attempted to match use of force reports by officers to specific arrests and incidents detailed above. Generally speaking, policy requires that officers complete Use of Force reports whenever they use force greater than *de minimis*, which is defined by policy as force intended to guide or control that is not likely to cause pain or injury. See SPD Policy 8.050. When such force is ordered by a supervisor as part of a squad tactic, the supervisor is expected to complete the Use of Force report rather than the officer. However, under current SPD policy, where a bicycle is used as an impact weapon, it required to be reported. See SPD Policy 8.300-POL-4.

As an initial matter, OPA did not identify use of force statements for any of the bicycle strikes or pushes detailed above, including the strikes by NE#6 and NE#8 which involved lifting at least one wheel of the bicycle from the ground to strike a person. Similarly, no Use of Force reports or statements were made when officers used the front tire to push or hit a person's legs.

NE#1, the Incident Commander, did not himself use force but completed a use of force witness statement. In that statement, NE#1 recorded that he was present at the event in a car with the Operations Section Chief and an SPD Intelligence Unit detective. Prior to the incident, he wrote that Intelligence notified him of the likelihood that the demonstration march would go to the SPOG building and planned accordingly. NE#1 wrote that he was aware of past incidents of violence and attempted property destruction directed at officers and public buildings. He recorded that on the day of the protest, Intelligence provided information about "black bloc" protesters at the meeting place and joining the march.



Intelligence reported that there was a planned signal for members of the crowd to engage in "direct action." The signal was reported to be a plume of smoke set off in the crowd. Intelligence also informed him of an individual with an incendiary device, and NE#1 authorized an arrest. Later, when directing that the crowd be moved north on 4th, NE#1 recorded that he gave dispersal orders using his vehicle's PA system.

NE#2 completed a Use of Force report regarding his deployment of OC. In the report, NE#2 stated that he deployed OC spray at three demonstrators who were standing in front of him refusing to move and blocking his vision of the rest of the crowd. He stated that he was concerned members of the crowd would throw Molotov cocktails, which he knew an unknown number of demonstrators had based on the arrest directives recorded in the CAD. He stated that the crowd's prior conduct showed that demonstrators were willing to commit assaults. NE#2 reported that he directed his OC spray at a member of the crowd whose umbrella he had just seized, and that this individual fell back into the group creating space as intended. Neither NE#2 nor NE#9 completed a Use of Force report for the power slide during which they came into contact with demonstrators.

NE#4, the sergeant, completed a Use of Force report related to the OC deployments he made while setting up the perimeter near the SPOG building. He stated that at the time, a dispersal order had not yet been given but that numerous officers were ordering the crowd to move back. NE#4 reported using OC to prevent assaults on officers which were more likely to occur if the crowd was allowed to remain in place while arrests occurred. He wrote that "[h]istorically, if we allow the crowd to move in on arrest projectiles begin to be thrown and officers assaulted." At the time, officers were attempting to arrest Subject #1 in the crowd while demonstrators attempted to prevent them from doing so.

In describing the force he used with specificity, NE#4 stated that he first deployed OC when "[o]ne female in particular refused to move back" when he directed her to do so. The OC spray was effective in causing her to move. He stated that he used OC again on "other individuals" who similarly did not move back.

NE#4 detailed his arrest of Subject #2 and the force he used. He stated that immediately following his second use of OC, "a male threw a stick" at him which struck him on or around his face. He deployed OC to "repel" Subject #2 and directed his squad to make an arrest. The arrest took approximately 3 minutes, and during his attempts to make the arrest NE#4 stated that Subject #2 ran at him. He again deployed OC but was not certain if there was any effect. After the arrest, NE#4 recorded that he observed no OC residue on Subject #2 and that Subject #2 did not complain of OC exposure. He confirmed with Subject #2 that he was not injured.

NE#4 also recounted deploying blast balls during the crowd movement north.

NE#5 completed a Use of Force report associated with his arrest of Subject #5. In his report, NE#5 wrote that Subject #5 punched him in the face and head, and that he responded with "a front strike with a closed fist on my right hand to the cheek and chin area of the subject." He recorded that the punch caused Subject #5 to fall to the ground and that he completed the arrest without further reportable force.

NE#6 completed two relevant Use of Force reports. One concerned the arrest of Subject #3 (the individual with the leaf blower) at the SPOG building. In this report, NE#6 stated that he punched the Subject once in the face to "to distract him and obtain pain compliance." NE#6 stated that he did so because he could not see Subject #3's hands. Subject #3 was actively resisting being arrested by three officers. NE#6 stated in his report that because Subject #3's hands were not visible, he was concerned Subject #3 could be armed. He stated that given the positioning and



circumstances, he could not use a trained “cross-face” technique nor deploy OC. He stated that the strike was successful in making Subject #3 move his hands out from under his body.

NE#6's second report was regarding his interaction with Subject #4, who assaulted him. It was consistent with the summary above. See Section I(C).

C. Training Records

OPA examined the 2019 Bicycle Crowd Management Training materials created by SPD. These materials were used to train bicycle-qualified officers on crowd management and crowd control tactics. Of relevance here, training materials described the proper deployment of a new mobile fence line when officers seek to move the crowd. As described in that training, point officers (the officers leading the movement to deploy a new line) are directed to stop at the center of a desired line formation and to do so “as close to the crowd as safely possible, without making contact.”

The training also described how to report force used during crowd management. According to the training, when a Type I or higher use of force is ordered by supervisors, officers are not required to report that use of force. Instead, supervisors should complete the required reporting. By contrast, where officers use force to conduct an arrest, they should report the force to a supervisor during arrest screening.

In consultation with the Department, OPA also learned that where an officer is ordered to engage in crowd management, but is not specifically directed to use reportable force in doing so, that force is considered discretionary by the officer and should be reported.

SPD training records showed that all Named Employees were current on required trainings. NE#5, NE#6, NE#7, and NE#8 do not appear to have attended the 2019 Bicycle Crowd Management Training, although some of them did attend other trainings which may have covered similar material.

OPA also examined the 2018 IDSM Prisoner Control and Turtled Subject training materials, which are relevant to NE#6's arrest of Subject #3, including the closed-fist strike. According to the training, a “turtled” subject is one who keeps his or her arms and hands under the body and out of view of officers. This is described as a form of “active resistance” by the training, which also articulates the risk that a subject in this position may be trying to retrieve a weapon. The training describes a range of responses, beginning with control holds and escalating to closed-fist strikes for noncompliant subjects.

VI. Interviews

OPA conducted interviews with a number of complainants, witness employees, and the named employees. The complainant interviews were incorporated into the summary of complaints above. Remaining interviews are described below.

A. Witness Employee #1

OPA interviewed Witness Employee #1 (WE#1), who is the SPOG president, regarding allegations that SPD and SPOG coordinated the crowd dispersal using music. WE#1 denied this and stated that the union was holding a Labor Day barbecue at the time. He stated that he played loud country music to drown out the crowd outside. WE#1 stated that



he had been informed by SPD that an individual in the crowd might attempt to use violence or commit property destruction, and noted that on prior occasions members of the public had attempted property damage or vandalism at the SPOG building.

B. Witness Employee #2

Witness Employee #2 (WE#2) is a lieutenant with significant bicycle experience assigned to the Community Response Group. He is an expert in bicycle crowd control tactics and leads a significant amount of SPD's bicycle training. He believed he led the 2019 bicycle training referenced above but was not certain.

WE#2 discussed various bicycle tactics observed during this incident. Regarding the "power slide" used by NE#2 and NE#9 during which they appeared to slide their bicycles into the legs of demonstrators. WE#2 stated that this was not a trained tactic and, depending on the speed and force used, could be up to Type III force, or force which can reasonably be expected to cause significant injury. He confirmed that officers are trained to slide close to, but not into, members of the crowd. After specifically observing the video clip of NE#9 using a power slide and impacting a demonstrator's shield, WE#2 stated that the power slide itself is a trained tactic (see above). He did not believe that striking a shield was reportable force unless there was a complaint of injury or pain. WE#2 stated that in this situation, he believed the reporting requirement would fall on the incident commander who ordered officers to form a line and push the crowd.

WE#2 described the front-wheel push used by several of the named employees to encourage demonstrators to move faster. He stated that it was not a trained tactic. He said that based on the PSI of a bicycle tire, it could reasonably be likened to an open hand push to move an individual and was thus not reportable force unless context indicated otherwise.

WE#2 viewed the video clip of NE#6 swinging his bicycle's rear tire to strike an individual. He stated that this was not a trained tactic. Based on the video clip, he said that the force did not appear to be effective but declined to speculate as to what type of force it constituted without additional context.

WE#2 was asked about the speed at which demonstrators are expected to disperse once an order is issued. He stated that it depends on the totality of circumstances, particularly the danger to officers. He stated that on the date of the incident, objects were being thrown continuously at officers, including rocks, fireworks, and a Molotov cocktail. WE#2 stated that the officers were in a "reasonable" amount of danger as a result. Because dispersal orders are to be given only when there is a present or imminent risk of significant violence, WE#2 was unable to articulate what a "perfect" dispersal should look like. He said that relevant considerations for ordering a crowd to move faster included whether the crowd was "blocking up" (note: engaging in formation tactics) or putting on protective gear in preparation to confront officers.

Finally, WE#2 stated that he was a supervisor on the date of the incident, although he did not himself interact with demonstrators. He learned over radio that an individual (Subject #1) was observed with an incendiary device, but could not recall if he or another supervisor ordered the arrest. He coordinated parts of the arrest attempt. WE#2 also stated that he knew some of the employees who were off duty inside SPOG on the day of the incident, but did not coordinate with anyone in SPOG or know of any planning related to using music to coordinate SPD's arrest attempt.

C. Named Employee #1 Interview



NE#1 was the IC for this incident. He recounted his planning for the march consistent with his Use of Force witness statement above. Specifically, he noted the appearance of a plume of smoke and the intelligence he had suggesting that this was a pre-planned signal for the crowd to engage in "direct action." He also noted intelligence about Subject #1, who was observed with Molotov cocktails.

Regarding the decision to arrest Subject #1, NE#1 stated that he and other supervisors jointly worked out the plan for the arrest. He did not believe that a dispersal order was necessary prior to the arrest given the "high priority" of arresting a suspect with an incendiary device. NE#1 acknowledged that the crowd did not necessarily have the information he had regarding a suspect with incendiaries, and that a reasonable observer might conclude that SPD acted without reason.

Regarding specific tactics used to control and then disperse the crowd, NE#1 said that he did not specifically direct officers to push crowd members with their front tires, or strike them with the rear tire of the bicycle. He stated that typical tactics for crowd control included a mobile fence line. NE#1 did not order anyone to deploy OC or blast balls, but discussed the parameters for doing so with subordinates during planning.

Regarding coordination with SPOG, NE#1 stated that he did not work out any signals with the SPOG president or any other union employee. He denied having knowledge that SPOG would play music or that there was any meaning associated with it, and said that in his opinion, it did not affect SPD's actions. NE#1 said that he met with the SPOG president earlier that day to discuss the fact that a protest would likely occur, and that it was not unusual for SPD to contact owners of an affected business or other private entity. He did not give any specific intelligence to SPOG regarding a demonstrator with an incendiary device.

NE#1 stated that when the initial attempt to arrest Subject #1 took place, it was not safe or feasible to issue a dispersal order and then wait for the crowd to begin dispersing. He did ultimately issue a dispersal order from his vehicle, before transitioning to an SPD truck with a larger PA system for the push north on 4th Avenue S. He noted that 4th Avenue is a very wide street and that there were no obstructions on it, meaning that demonstrators had a clear avenue to retreat north. He gave numerous dispersal orders on 4th Avenue.

Finally, NE#1 denied any knowledge of an SPD "plant" or "operative" within the crowd used to justify violence. During the incident itself, he was not aware of an individual specifically carrying a box of Molotov cocktails and only learned about the Molotovs when the box was later recovered by SPD's bomb squad.

D. Named Employee #2

NE#2 has worked for SPD for about 5 years. He is a bicycle trained officer and attended the 2019 training. He stated that in his opinion, his use of the bicycle, including the "power slide" maneuver, was *de minimis* force. He has not been trained to use his bicycle as an impact weapon. He described using a bicycle as an impact weapon in terms of swinging the bicycle to strike a person.

NE#2 said that at the time he conducted his "power slide" and contacted demonstrators, he and other officers had been engaged with the crowd for "several blocks." He heard dispersal orders being issued. He stated that he had been assaulted by members of the crowd, witnessed other officers assaulted, had been exposed to OC spray, and saw that the demonstrators in front of him were forming a shield wall. He and other officers were aware that at least one



person in the crowd had incendiary devices and believed that a "life safety" issue existed. He stated that his desired intent at the time he made contact with the crowd was to get the crowd moving.

With regard to the power slide, NE#2 stated that he deliberately slid his rear tire into the crowd but disputed that it constituted force as defined by policy. He based this on the fact that the crowd members in front of him were using shields, and he could not be certain that his tire in fact hit crowd members in the legs as opposed to the shield. He said no protester reported an injury. Regarding reported the power slide, NE#2 said that crossbow maneuvers and line-setting are generally performed at the direction of a sergeant. He also stated that he did not believe it constituted a use of force.

E. Named Employee #3

NE#3 has been an SPD employee for about six years. He recalled arresting Subject #6 for failure to disperse. He stated that at the time, Subject #6 was walking backwards slowly with arms linked with other demonstrators. Consistent with his arrest report, NE#3 stated that he believed Subject #6 was doing so deliberately to slow and break up SPD's police line. He recalled hearing dispersal orders clearly broadcast prior to arresting Subject #6. He believed it would have been clearly audible to demonstrators as well but could not speak to their understanding or to Subject #6's specific awareness of it.

OPA played the portion of NE#3's BWV preceding arrest. NE#3 pointed out the appearance of a scattered and broken police line in his vicinity and that of Subject #6, with some officers ahead of others. He said that Subject #6 was directly in front of him, linking arms with others, in a tactic to prevent officers from advancing together. He characterized the linked arms as a "de-arrest" tactic to prevent officers from effectively arresting members of the crowd who were obstructing them.

NE#3 stated that he believed Subject #6's conduct met the elements of SMC 12A.12.020, Failure to Disperse. He also stated that there are officer safety considerations at play in keeping crowds moving, because when a crowd becomes stationary it is easier for individuals to pick up and throw objects, and for the front rank of a static crowd to shield individuals behind them while they throw objects.

F. Named Employee #4

NE#4 has been an SPD employee for about 12 years. He completed all relevant trainings. NE#4 used OC spray four times during this incident.

In the first instance, NE#4 deployed OC at a woman while he was forming a perimeter around several ongoing arrest attempts, including the attempted arrest of Subject #1, who was believed to have Molotov cocktails. He stated that he was not sure whether one of the arrests occurring behind him was of Subject #1 or another person, but that the situation was "total chaos." In deciding to deploy OC, NE#4 said that he did not want the woman to charge the line or interfere with an arrest. He did not give a verbal warning but stated that he had already shouted "move back," as were other officers. He believed that the appearance of a police officer holding an OC canister while telling people to get back was sufficiently clear warning that failure to do so would result in OC exposure, and that given the dynamic situation no further warning was feasible. The OC deployment was successful in causing the woman to move back.



In the second instance, NE#4 deployed OC at another woman in substantially the same situation moments later. NE#4 articulated substantially the same considerations in his interview. Moments later, Subject #2 threw a stick at NE#4, and NE#4 responded by spraying OC in his direction. He saw Subject #2 appear to bend down to pick up an object and sprayed OC again in his direction to prevent another assault but could not be sure if it was effective. He ordered his squad to arrest Subject #2. He said it was not feasible to warn Subject #2 either time, because an assault was occurring.

In the third instance, NE#4 was attempting to arrest Subject #2. Subject #2 was within a group attempting to disappear into the crowd. NE#4 stated that he deployed OC spray because he recognized Subject #2 as the individual who had just assaulted him, and he believed that doing so would "lessen his likelihood of fighting." It was not feasible to warn the subject because he had fled, was attempting to hide in the crowd, and already knew he was the target of an arrest.

The fourth time NE#4 used OC spray, he did so on the group holding shields. He stated that he believed they were engaging in tactics purposed to shield other individuals who were throwing rocks and otherwise assaulting officers. NE#4 stated that he had received training on such tactics and recognized them in this instance. He used OC on two people holding shields to move them back and prevent them from protecting assaultive individuals. In NE#4's assessment, the OC had the desired effect because he and other officers were able to seize some shields. The shield group subsequently broke up and began dispersing.

G. Named Employee #5

NE#5 has been employed by SPD for about three and a half years. He was current on all required training, but did not attend the 2019 bicycle training described above.

NE#5 described his decision to use his bicycle's front wheel to push an individual among the group holding shields. He stated that he did not have a particular reason to focus on that individual as opposed to another similarly situated person, but that he intended to cause the group to continue moving and prevent them from assaulting officers.

He described his use of the bicycle's front wheel to push or hit one of the demonstrators walking backward with linked arms. He stated that this demonstrator was carrying an umbrella and using it to jab in the direction of officers, which he characterized as a weapon. He stated that he did not necessarily intend to strike the individual, as opposed to pushing, and did not believe that this use of the bicycle constituted use of an impact weapon.

Immediately afterward, NE#5 stated that Subject #5, one of the demonstrators who was walking arms-linked with the individual holding the umbrella, punched him in the face. He acknowledged being upset and stated that the punch was painful. He punched Subject #5 in order to prevent Subject #5 from continuing to assault him or other officers. He stated that he believed the force was reasonable, necessary, and proportional.

With regards to his use of profanity, NE#5 stated that he was the officer who said "move the fuck back," and acknowledged that he made several comments to Subject #5 to the general effect of "get the fuck off me," and "you fucking hit me, motherfucker. You want to fuck with me?" NE#5 said that he was extremely escalated at the time due to 12 minutes of preceding crowd control activity as well as the assault that had just occurred. NE#5 stated that he did not believe his comments were professional because they did not serve any law enforcement purpose.

NE#5 stated that he did not use force against Subject #5 to retaliate. He said that after being assaulted and punching Subject #5, he initially removed himself from the situation because he considered himself the victim of a crime and



believed it inappropriate to remain engaged with Subject #5. However, he observed Subject #5 continuing to struggle with officers and re-engaged to assist. He stated that the remainder of the force he used was *de minimis*. After the arrest, NE#5 used a knife to cut away Subject #5's backpack, which he seized incident to arrest.

H. Named Employee #6

NE#6 has worked for SPD for about 6 years. He participated in the arrest of Subject #3 (leaf blower subject) and used a closed-fist punch when doing so. NE#6 stated that he had worked crowd management at SPOG headquarters before. Based on that experience and the crowd's demeanor, he stated that he believed it likely that members of the crowd would be assaultive. He stated that when he and other officers entered the crowd, he observed a demonstrator punch a sergeant. (Note: OPA's review of BWV, including that sergeant's BWV, appeared to corroborate this statement). He had observed Subject #3 using a leaf blower at the start of the incident to blow smoke and OC in the direction of officers. When he engaged Subject #3, Subject #3 was on the ground and was struggling with three other officers. NE#6 described Subject #3 as moving around and said that he could not see Subject #3's hands.

NE#6 stated that he believed his use of a punch was consistent with his training, which included a range of responses up to use of strikes. He clarified his written statement to indicate that as trained, strikes are properly used to distract and interrupt a subject's behavior. This is distinct from "pain compliance," which is not a trained tactic but, contextually, would be understood to include the infliction of pain to force compliance.

NE#6 stated that his use of a strike worked as intended. It caused Subject #3 to move his hand out from under his body to shield his face, allowing NE#6 to take control of the hand. After using the strike, NE#6 stated that he did not observe any injury to Subject #3. (Note: Subject #3 appeared to sustain abrasions and bleeding to the other side of his face during arrest. This appeared to be caused by the pavement as opposed to NE#6's strike).

NE#6 stated that when he attempted to arrest Subject #4 (the assaultive individual in the parking lot), he sustained injuries to his knee. Subject #4 also kicked him in the head, and he experienced dizziness and ringing in his ears. He was hospitalized after this incident and diagnosed with a fractured knee and possible concussion. He took 5 weeks of medical leave because of these injuries.

NE#6 discussed swinging his bicycle to strike a demonstrator with the rear wheel. He stated that this was not a trained tactic and, on reviewing the video, said that it would accurately be described as using the bicycle as an impact weapon. He explained that at the time, in his view police tactics had broken down, and pointed out the areas where the police line had become uneven and broken. He described his concern that there were protesters ahead of and behind him. He recalled feeling extreme fatigue and pain from his injuries and noted that supervisors were directing officers to keep the crowd moving.

NE#6 also discussed using his bicycle wheel to strike Subject #7. He first used his bicycle's front wheel to strike Subject #7's legs and then, later, lifted it up to hit him in the back. NE#6 said that using the wheel to strike an individual's legs was not a trained tactic, but one he had seen used successfully by officers at other demonstrations in the preceding months. He said that he did not view the front tire as an impact weapon in the same way as the swing with the rear wheel and characterized it as more of a "push." He stated that at the time, Subject #7 was behind the front rank of bicycle officers and was preventing him (NE#6) from maintaining position in line. He said that Subject #7 appeared to be intentionally placing himself between police and more aggressive "black bloc" demonstrators.



NE#6 stated that he did use his bicycle as an impact weapon but likely failed to report it. He said that he completed a "general use of force" for the whole incident but could not recall if he referenced the bicycle tactics. He said that he completed the reports after his medical leave at the direction of a sergeant. OPA determined that NE#6 did not specifically report the bicycle tactics in those reports.

I. Named Employee #7

NE#7 has worked for SPD for about 12 and a half years. He described the force used when pushing a man in a light blue denim shirt and jeans while moving the crowd north. NE#7 stated that in his opinion, the man was deliberately attempting to slow the police line by walking directly in front of him, to separate the police line from other demonstrators. He stated that he pushed the front tire of his bicycle into the man's leg to "motivate" him to keep moving. NE#7 stated that he did not believe the man was committing a crime at the time. He stated that the force was *de minimis* and that it allowed him to retain control of his bicycle. He stated that this was not a trained tactic. He stated that he pushed the man a second time with his open hand because, after being pushed by NE#7's bicycle front tire, the man sped up momentarily and then again slowed down.

BWV showed NE#7 push a separate unidentified individual shortly afterward. NE#7 said he did so because the person was in the way, and he was trying to clear a path. He did not believe the person constituted a threat at the time.

Shortly after, NE#7 pushed the first man again. He said that the man was still walking slowly and that his conduct appeared purposeful and intended to slow the line. NE#7 intended to "motivate" the man and, after the push, the man left the area.

He stated that he did not believe his use of the bicycle constituted an impact weapon. He stated that in his view, all of his contacts described above were *de minimis*, non-reportable force.

J. Named Employee #8

NE#8 has worked for SPD for over 23 years. He is currently assigned to the training section but worked crowd control on the date of this incident due to staffing needs. He stated that he has been trained on using bicycles for crowd control, but did not believe that he attended the 2019 training. Records did not show he attended.

NE#8 acknowledged using his bicycle's front tire to push individuals in the legs. He stated that he has used this tactic since 2001 and has seen it used by others. In his view, it is similar to using the body of the bicycle to push as trained in a mobile fence line. NE#8 stated that given the speed he and the crowd were moving, carrying his bicycle as in a mobile fence line would be difficult and impractical.

NE#8 characterized the individuals he pushed in this manner as walking backward while not complying with orders to disperse, instead hindering officers from advancing at a quicker rate. NE#8 acknowledged that there is no legal requirement as to how fast people must disperse. Similarly, they are not required to walk in a normal walking pattern. However, NE#8 stated that walking backward slowly in this manner facilitated other members of the crowd's attempts to throw objects or otherwise assault officers. NE#8 said that he believed his decision to push with his bicycle's front tire was reasonable, necessary, and proportional. He believed he was trained in a similar tactic circa 2001.



NE#8 discussed lifting his bicycle's front wheel to strike the man in navy who was walking in front of him. At the time of the strike, NE#8's BWV showed that the man was facing away and walking normally, albeit not significantly faster than before. He stated that this was a trained SPD tactic from 2001 and likened it to an "extension of his hand." NE#8 said that the crowd on the right side of the police line was not dispersing and that the individual in navy that he pushed or struck with the front wheel of his bicycle was not following orders to disperse, but was not committing other crimes.

NE#8 then described his interaction with the man in a blue t-shirt carrying a sign. He said that at the time, the man and other nearby crowd members were moving back as directed but appeared to be slowing down. He stated that his intent was to get the crowd to "move faster." He said that the man himself was not a threat to NE#8 or others, but that his presence and speed of dispersal was distracting and could be used as cover for others in the crowd to commit violence.

Immediately after, NE#8 was recorded using his bicycle wheel to strike a man in maroon wearing a green tactical vest. NE#8 described the incident as follows. He stated that when he used his bicycle's front wheel on the man in the blue t-shirt, the man in maroon turned to face him. He did not know what this man's intent was and used his bicycle's front wheel to block the man. As this was happening, a member of the crowd threw a Molotov cocktail which ignited in the street. He said he believed that the man in maroon was trying to attack him (NE#8) because the man grabbed his bike and pushed NE#8 back.

Shortly after the crowd turned right on Holgate, NE#8 observed a man on a bicycle stop on the corner. BWV appeared to show the man stopping and looking back at the crowd as it turned the corner. NE#8 stated in his interview that he used his bicycle to try to hit the man's bicycle. He did not recall if he made contact or not. He said he was concerned because the crowd and officers were intermingling and both lines had broken down. His intent was to keep the man moving and to prevent him and other members of the crowd from stopping, which would increase the risk that individual officers could be assaulted. NE#8 said that he believed that if officers advanced past the man, he could assault them from behind. He stated that after hitting the man's bicycle, he grabbed the man by the shoulder and pushed to keep him moving.

NE#8 described using his bicycle to push a woman in green in the legs. He articulated substantially the same reason as applied to the man in navy and the man in the blue t shirt above. He concurred with a statement by OPA that the crowd appeared to be moving already but stated that that element of the crowd at the time appeared to be slowing down. He stated that some of his decision-making related to this and the man on the bicycle was informed by the fact that someone had just thrown a Molotov cocktail and the crowd appeared to be escalated as a result.

NE#8 was asked about statements he made to the man in the blue t-shirt, the man in maroon, and others to the effect that they should "start fucking running" and to "get your ass moving." NE#8 stated that he used profanity for emphasis and to underscore the seriousness of his directive that the crowd should move faster. He said that much of the profanity was used in and around a "chaotic" moment in which a Molotov cocktail was thrown and was burning on the street. He stated a belief that the relative prevalence of profanity now lessened any potential for escalation. He also stated that he did not use profanity to demean or insult any person. Overall, he believed that his tactics did not escalate the situation beyond where it already was and were not unnecessary given the circumstances.



K. Named Employee #9

NE#9 has been an SPD employee for four and a half years. Prior, he served about 13 years with a law enforcement agency in California.

NE#9 described the "power slide." He stated that at the time his bicycle wheel contacted crowd members, he was not on his bicycle but had dismounted. He described intending to swing the bicycle to face the crowd as trained for a mobile fence line. He stated that he did not deliberately strike any demonstrator and that if his bicycle wheel made contact, he believed it contacted a shield. He did not recall if he swung the wheel toward the individual or if the individual moved his shield up, causing the impact.

NE#9 also described using his bicycle's front wheel to bump members of the shield group. He stated that this was not a trained tactic but one which individual officers had developed throughout the protests as a means of breaking up groups of demonstrators in formation. He stated that his intent was to move the demonstrators, who were using shields and working in concert to delay SPD's advance on the left of the line. He stated that he modulated his force after the shields were seized and the group began to disperse. He stated that the individuals he contacted with his wheel were committing the crimes of failure to disperse and criminal mischief, and that their actions served to shield individuals further back who were assaulting officers with thrown objects. NE#9 stated, finally, that he believed his actions constituted *de minimis* force and were not reportable force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

14.090 Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates

SPD Policy 14.090-POL-8 states that the Incident Commander (IC) retains ultimate responsibility for the decisions of subordinates. The policy goes on to state that to fulfill this obligation, the IC will remain available on scene for consultation. *Id.*

The substance of this allegation was that in ordering the arrest of Subject #1, NE#1 and subordinate supervisors effectively dispersed the demonstration crowd without meeting the requirements imposed by SPD policy. In assessing this allegation, OPA considers whether the decision to arrest Subject #1, and to enter the crowd to do so, was a crowd dispersal within the meaning of the policy and, if so, whether the failure to provide required warnings violated policy.

At the outset, OPA determines that the decision to arrest Subject #1 was imputable to NE#1 as the Incident Commander, even if the actual order to do so and the timing of that arrest were actually made by his designees. As NE#1 noted in his interview, he participated in this decision and received intelligence updates throughout.

However, OPA finds that the decision to conduct a targeted arrest was not, in itself, a decision to disperse the crowd. First, the record clearly shows that NE#1 intended to use targeted arrests as an alternative to crowd dispersals. Second, OPA's examination of the CAD report, radio traffic, and interviews all suggest that the decision to disperse the crowd was reached independently from the decision to attempt a targeted arrest of Subject #1, that NE#1 had a factual basis for reaching that conclusion, and gave the required orders as analyzed below.



Significant policy considerations also undergird OPA's decision that a targeted arrest differs fundamentally from a crowd dispersal. Holding otherwise would effectively make it impossible for SPD to conduct targeted arrests and would require crowd dispersals in almost all demonstrations where individuals or groups make isolated attempts to break the law—which describes functionally every demonstration that occurred in the summer and fall of 2020.

An over-reliance on crowd dispersals, and the associated use of area-effect tools like CS gas and blast balls affecting peaceful demonstrators, is precisely the basis on which a Federal court recently held that SPD had violated an order regarding indiscriminate uses of force. If SPD cannot conduct targeted arrests, and similarly cannot disperse crowds, then it is functionally unable to police demonstrations in which the actions of a small number of demonstrators present significant risks of harm. OPA declines to reach this result.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

14.090 Crowd Management 9. Crowd Dispersal a & b.

SPD Policy 14.090-POL-9(a)&(b) states that upon determining that there are acts or conduct within a group of four or more persons posing a “substantial risk” of injury to any person or “substantial harm” to property, an incident commander may order that the crowd be dispersed. SPD Policy 14.090-POL-9(a). The policy goes on to state that the IC “shall consider whether less restrictive means” such as “area denial and/or seeking voluntary compliance” are available. *Id.* It further requires the IC to determine a safe path of egress for the crowd and, where possible, broadcast a dispersal order prior to dispersing the crowd. *Id.* When ordering dispersal, the IC has the authority to direct the use of less-lethal tools including blast balls and OC spray. SPD Policy 14.090-POL-9(b). A lieutenant who is not the IC may direct the use of less lethal when a “life safety emergency” exists. *Id.* The policy defines a “life safety emergency” as “an unplanned, dynamic situation where immediate police action is necessary to protect the officers’ and/or the public’s safety.” *Id.* It goes on to state that when feasible, a dispersal order should be given sufficiently prior to the use of less lethal to allow the crowd to disperse peacefully, and that OC and blast balls should not be deployed in the vicinity of people who do not pose a threat. *Id.*

As noted above, OPA finds that NE#1 met the required threshold to order that the crowd be dispersed. Specifically, OPA finds that NE#1 had substantial basis to believe that there was both a “substantial risk” of injury and that “substantial harm” to property might occur. At the time NE#1 ordered the crowd dispersed, officers had failed to locate the individual reported to be carrying an incendiary device (ultimately determined to be approximately 12 Molotov cocktails). In the process of failing to make this arrest, officers also encountered significant physical resistance including punches, the use of shields to shove and block officers, and other similar activity.

Neither was the immediate failure to give a dispersal order grounds to find a violation of this policy. Dispersal orders must be given when “feasible,” and at the time NE#1 ordered the crowd dispersed officers were already in contact with the demonstrators based on their attempt to arrest Subject #1. This rendered any “warning” moot. This is certainly not an ideal outcome. However, in situations such as this where a clear exigency exists, OPA agrees that feasibility considerations can overcome the requirement for warnings to be given.



Finally, the use of less lethal tools was justified by the situation, both at NE#1's direction as the IC and at the direction of lieutenants. First, after determining that there was a basis to disperse the crowd, policy gave NE#1 discretion to use less lethal tools to do so where necessary. OPA also notes that this demonstration saw the use of relatively few blast balls as compared to some earlier demonstrations. Second, given the presence of at least one individual with Molotov cocktails (a deadly weapon) as well as the use of fireworks, there was a legitimate basis to believe a life safety emergency existed.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

14.090 – Crowd Management 14.090-TSK-3 Issuing the Order to Disperse

SPD Policy 14.090-TSK-3 outlines the steps and considerations that the Incident Commander (IC) must undertake after determining that a crowd dispersal is necessary under SPD Policy 14.090-POL-9(a)&(b). The policy states that, where feasible, an IC should consider placing officers at the rear of the crowd to ensure that dispersal orders are heard by all, allow a reasonable time for the crowd to disperse, repeat the order if feasible, and continually balance the time given to disperse against the need to control the incident. SPD Policy 14.090-TSK-3. The policy also provides a standard form for the dispersal order broadcast to the crowd. *Id.*

For the same reasons as above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Some complainants alleged that NE#1 coordinated with the president of SPOG to conduct policing activities, and that SPOG used country music as a signal to direct officer tactics or conduct. If true, this allegation would have constituted a significant violation of SPD's professionalism policy.

OPA was unable to identify any basis to believe that the music was a “signal” or that it was used to direct police activity. In reaching this conclusion, OPA notes that this is different than saying that the playing of music was innocuous or, if done by an SPD officer on duty, would have itself been professional. Indeed, some evidence including the title of SPOG's own video (titled: “SPOG blasts country music at Antifa!” suggests that SPOG



intentionally played the music to incite or annoy the demonstrators. OPA finds this juvenile and entirely improper; however, there is no evidence connecting the actions of SPOG with those of NE#1, his designees, or any of the officers assigned to the demonstration.

Indeed, OPA could find no basis to believe that NE#1 knew about a plan to play the music, agreed to it, or intended that his officers would take any police action because of or in response to the music playing. NE#1 explicitly and credibly denied that this was the case when asked. More importantly, OPA could not identify a clear causal connection between the music and the time that officers began riding toward the crowd, which occurred 1 minute and 9 seconds after music began playing. The mere fact that one act preceded another does not, without more, establish a causal connection, and OPA could identify no other evidence to substantiate this allegation.

For this reason, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

As noted above, OPA received complaints alleging that the individual seen carrying Molotov cocktails was a “plant” that NE#1 and others used to justify police action. If true, this would violate SPD’s professionalism policy and very likely the law.

OPA found no evidence to suggest that the Molotov cocktail subject was an SPD employee or in any way associated with SPD. Instead, it found significant evidence to the contrary. Most convincingly, the individual identified as Subject #1 was observed in the crowd both before the beginning of protest activity at SPOG and many minutes later, when he conversed with another individual he appeared to know on the “Malcontentment Tango” stream while demonstrators moved north. There is reason for OPA to believe that many members of the crowd are at least passingly familiar with each other from other demonstrations, and evidence suggests this is the case for Subject #1.

In addition, OPA received information from the Department suggesting that a person of interest has been identified as being Subject #1 and that this individual is not associated with SPD. While this is not, in itself, dispositive information, combined with the above recordings and the lack of any evidence to the contrary beyond suspicion of SPD’s motives, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the



circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Throughout this demonstration, there were multiple uses of force, including deployments of OC spray and limited deployments of blast balls. However, one of the most prevalent uses of force were the pushes into demonstrators with bicycles that were used to move the crowd. At times, these pushes were effectuated with the front tire raised up and, at other times, officers pushed the front tires forward into the lower backs or legs of demonstrators. These tactics were used towards demonstrators who had linked arms and were walking backwards facing the officers but, at other times, they were used on demonstrators who were walking forward, albeit not as quickly as ordered by the officers. OPA notes that, at all of these times, the demonstrators were subject to a dispersal order and were being repeatedly told to “move back.”

These tactics were a departure from the trained practice of using the side of a bicycle in a mobile fence line to push individuals. They appeared to be utilized to control the more fluid crowd that presented on September 7, which was different from the more static demonstrations that officers were facing with in the early months of the demonstrations. The tactics also appeared to be purposed to reduce the need to use less-lethal tools to move the crowd. Indeed, there were notably less blast balls used on September 7 than on some of the other larger and similarly violent protests.

OPA does not find that the vast majority of these pushes violated policy. To the contrary, OPA concludes that the officers had an interest in keeping the crowd moving. As was explained in the context of this and other demonstrations, officers were often confronted with tactics where individuals in the rear of a crowd would slow down in order to provide an opportunity for individuals deeper within the crowd to throw projectiles at officers. By keeping the crowd moving, this could be prevented. Moreover, virtually all of the force involved pushing the front tire of the bicycle forward to make contact with the middle of a demonstrator’s body. In many respects, pushing with the tire, that is an inflated object, is a lesser use of force than using the side of the bicycle, as normally done.

However, OPA was concerned with what appeared to be the ad hoc nature of these tactics, the fact that several officers used the bikes to strike rather than push demonstrators (*see* NE#6 and NE#8), and that officers continued to push demonstrators who were walking and, at times, walking quickly. OPA imagines that, from the perspective of many demonstrators, they could not walk faster given people in front of them and the pushes felt arbitrary, capricious, and punitive.

Ultimately, creating tactics that may help avoid high levels of force and the use of chemical agents is a good thing. This being said, it is important to ensure that these new bicycle tactics are uniform, are used appropriately, and serve larger Department goals. Moreover, the use of these tactics should reduce not increase potential harm to demonstrators and should be used in a manner that is perceived as legitimate. Lastly, such tactics should be fully reviewed and approved by the chain of command, the Training Unit, the Monitoring Team, DOJ, and City partners (including OPA) prior to becoming a signed off on crowd control tactic. This will serve to ensure that these tactics, and the attendant force used, are fully fleshed out, are constitutional, and are in line with the requirements set forth under the Consent Decree.

For these reasons, OPA issues the following Management Action Recommendation:



- **Management Action:** SPD should select a group of officers and supervisors with particular expertise in bicycle tactics and crowd control to critically evaluate the tactics described above, with the goal of determining the proper applicability of these tactics to different crowd control situations and any limits that should be placed on their use. In doing so, SPD should attempt to determine what, if any, outside expertise would be relevant to evaluating these tactics. In addition, SPD should seek to engage community stakeholders, including but not limited to the Accountability Entities, in any needed policy development. Ultimately, SPD should include the results of this evaluation in future bicycle crowd control trainings and instruct officers in how to use these tactics appropriately.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. This policy defines different levels of force and is intended to devote greater resources to reviewing more serious types of force. *Id.*

From OPA's review of the documentation concerning this incident, there was virtually no reporting completed by any officers regarding bicycle force tactics. Most officers later asserted that reporting was not required because the force was de minimis; however, OPA believes that these officers significantly underestimated the level of force they used. While there is a well-established requirement to report force, it is clear that the lack of documentation here was due to a systemic lack of understanding of how to do so given the new tactics involved.

Accordingly, as it develops parameters and guidance on the use of these bicycle tactics, SPD should also give clear instruction to officers concerning how the force must be documented and investigated.

- **Management Action Recommendation:** SPD should clearly express its expectations on how these bicycle tactics and the attendant force will be documented and investigated.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #3 - Allegation #1

6.010-POL - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

OPA finds that NE#3 did not violate department policy when he arrested Subject #6, the individual who was walking backward slowly with arms linked to others. In reaching this finding, OPA finds only that Subject #6's conduct met the elements of SMC 12A.12.020 (Failure to Disperse). It expresses no opinion as to the wisdom or necessity of the arrest.



Where there is objective evidence that an arrest was based on probable cause, that arrest is presumptively valid. See *Nieves v. Bartlett*, ___ U.S. ___, 139 S. Ct. 1715, 1723 (2019). Here, a public safety order to disperse had already been given. Subject #6 was congregated with at least four others (those with whom he had linked arms) and was part of a much larger demonstration group that included individuals who were throwing rocks, bottles, and other objects. While Subject #6, himself, was not doing so, his conduct prevented NE#3 and other officers from advancing past and increased the risk that some substantial harm would come to an officer or a member of the public. As such, it plausibly met the elements of the statute.

For this reason, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #4 - Allegation #1

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

SPD Policy 14.090-POL-10 states that deployment of OC spray or blast balls shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. SPD Policy 14.090-POL-10. It further states that individual officers may deploy OC spray or blast balls “at the specific suspect(s) who are posing a threat” and that if feasible, officers must provide a verbal warning prior to deployment. *Id.* Finally, the policy states that when feasible, officers will provide aid to subjects exposed to OC and/or blast balls and will request medical assistance when subjects complain of continued effects from OC or blast balls. Officers will request medical assistance when a subject appears to have been injured. *Id.* An officer’s decision to deploy OC or blast balls must be consistent with Title 8 – Use of Force. *Id.*

NE#4 used OC spray in a discretionary manner four separate times during this incident. OPA examines the discretion here, and then evaluates whether each was reasonable, necessary, and proper under Title 8.

NE#4 did not violate this policy by deciding to use OC spray or failing to give verbal warnings. First, NE#4’s deployments were all described with specificity and, on examination of BWV, were made against identifiable individuals who reasonably posed a threat. Moreover, in each case, numerous officers (including NE#4 in most cases) were giving repeated verbal warnings to “move back.” Given the totality of the circumstances, there would have been no ambiguity for a reasonable person present to understand that remaining in the area close to the police line risked exposure to OC spray.

The first deployment, against a female individual near the perimeter NE#4 had established, was reasonable given the arrests occurring immediately behind NE#4. At the time, he had reason to believe that the arrest was targeting Subject #1, the Molotov cocktail suspect, and that this arrest was therefore both a matter of exigency and one which presented a particular risk of violence if interference occurred. OC spray was necessary to secure the arrest against the potential for interference, and it was proportional to the risk that members of the crowd who approached the police line might engage in violence.

The second deployment was, as noted above, subject to essentially the same analysis with regard to another female near the perimeter. With regard to Subject #2 (the individual who threw a stick at NE#4), the deployment was



reasonable in response to that assault. It was necessary to deter another assault when the Subject was recorded on BWV bending down to pick up an object. It was also proportional to the risk created by thrown objects.

The third deployment was reasonable as part of efforts to arrest the same individual moments later as he attempted to escape into the crowd, in order to deter assaults both against NE#4 and other arresting officers as well as any other officers Subject #2 might later encounter. It was necessary both to deter another assault, and to prevent other members of the crowd from interfering with the attempted arrest as had already happened with other arrests that day. Finally, it was proportional given Subject #2's demonstrated willingness to assault officers.

The final deployment against individuals with shields was reasonable both to disrupt the group of individuals itself, which was a significant obstruction, and to protect against ongoing assaults from individuals behind them. Here, the weight of the evidence suggested that crowd members were acting in concert to delay SPD's line and facilitate assaults by others. The OC deployment was necessary to end the threats created thereby. It was also proportional both to that threat, and to the obstruction generally created by the shield formation which, in itself, constituted obstruction.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #5 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

Under this allegation, OPA analyzes whether NE#5's decision to punch Subject #5 violated policy and concludes that it did not. First, the evidence as a whole tends to suggest that Subject #5 punched NE#5 in the face first with sufficient force to cause pain. Given the close quarters at which NE#5 and Subject #5 stood and the large number of people around in all directions, NE#5 had limited time and options for how to respond. While a closed-fist punch might not be appropriate in all circumstances, here OPA finds that this level of force was not, in itself, unreasonable.

Moreover, given the assault that had just occurred towards NE#5, it also necessary for NE#5 to take some action to end the threat to himself (and potentially others). Again, because of the number of people around and the dynamic nature of the situation, retreat and de-escalation were not practical and, simply put, not required by policy in response to a relatively serious assault. Finally, the single punch was proportional to the danger posed.

For this reason, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #5 – Allegation #2

8.200 - Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 states that an officer may not use force to punish or retaliate. SPD Policy 8.200-POL-2. While this does not prevent an officer from using force to respond to danger or an assault where reasonable, necessary, and proportional; the officer's use of force must be directed toward a legitimate law enforcement purpose.



OPA finds that while NE#5's decision to use force was in response to him being punched, there is insufficient evidence to established that it was retaliatory rather than an attempt to defend himself. As discussed above, the evidence suggested that NE#5 used the amount of force necessary to effectuate his lawful purpose: ending the physical threat to his person and conducting an arrest. In doing so, he attempted to remove himself from the area when safe and feasible, and, when he re-engaged, he modulated his force appropriately.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #5 – Allegation #3

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

At the outset, OPA agrees with NE#5's admission that some of his statements were unprofessional. In particular, OPA identifies the statement, "you fucking hit me, motherfucker. You want to fuck with me," as giving rise to a presumption of retaliation. Had there not been significant mitigating circumstances, OPA would likely sustain this allegation.

First, the circumstances immediately preceding this incident are relevant to NE#5's state of mind. Simply put, he had just been punched in the face. The professionalism policy does not impose a standard of perfection; rather it attempts to determine what would cause a reasonable member of the public to lose confidence in the Department. While NE#5's conduct was not ideal, OPA believes that a reasonably objective member of the public would understand that an officer who had just been assaulted is unlikely to respond with the equanimity of an officer who was on routine patrol.

Second, the overall circumstances of the incident contributed to the sense of exigency and escalation felt by all involved. NE#5 believed at the time that at least some members of the demonstration crowd were armed with incendiaries and intended to use them. In fact, BWV of the demonstration showed numerous instances where fireworks were detonated both before and after this incident. Finally, the local situation in which officers were confronting a group of individuals bearing shields and interposing themselves between officers and members of the public who were taking the opportunity to throw objects to have contributed to the exigency. While this is not a license to engage in indiscriminate unprofessionalism, OPA does not believe that statements made under circumstances such as these can be assessed using the same rubric as those made in other, less escalated situations.

Lastly, had NE#5 not himself identified these as unprofessional statements and taken accountability for his actions, OPA would likely have recommended a Sustained finding. That he did so, coupled with the above analysis, informs OPA's conclusion that the right result is a Training Referral.

- **Training Referral:** NE#1 should be provided retraining and counseling concerning his use of profanity. While OPA recognizes the intensity of the situation, such language, particularly when coupled with force, is outside of the Department's and community's expectations. This training and counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #6 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

OPA finds that NE#6's uses of force which constituted "pushes" or "strikes" with the front tire of the bicycle are subsumed within the above MAR. See Named Employee #2 – Allegation #1.

This allegation concerns NE#6's uses of force to: 1) strike Subject #3 during his arrest; and 2) when he used his bicycle's rear wheel to strike a demonstrator who passed him on the right and appeared to bump into him.

A. Arrest of Subject #3

Here, OPA finds that the single punch did not violate policy. A closed-fist punch is a relatively high level of force. However, OPA finds that it was reasonable under the circumstances given Subject #3's active resistance to arrest and, particularly, the fact that his hands were under his body at the time and not visible. Importantly, this arrest occurred at a time when crowd members were still actively struggling with officers in the immediate vicinity, and in a context that made it reasonable to believe weapons might be used. The force was necessary to quickly gain control of Subject #3's hands and, indeed, was successful in doing so. It is also not clear, given BWV evidence and OPA's analysis of the arrest circumstances, that other less intrusive tactics were available to NE#6 which stood a chance of achieving the same result as quickly. Finally, it was proportional to the threat that Subject #3 might attempt to use a weapon secreted on his person, a consideration made potentially more likely given that he had been using a leaf blower to direct OC spray back at officers moments before.

B. Bicycle Strike with Rear Tire

The second use of force occurred when a group of individuals walked by NE#6 and one appeared to knock into him. NE#6 struck out with the rear wheel of his bicycle, impacting the individual who bumped into him. Unlike the use of the front tire of the bicycle to move individuals forward, which were pushes, what NE#6 did was clearly a strike. This is the case even though it appeared to hit the individual's backpack and did not cause the individual to appear to suffer any injury or to exclaim in pain or discomfort.

In evaluating this use of force, three facts are instructive. First, the force was in direct response to NE#1 being knocked into by the individual – a person who came into his blind spot and who he had not previously seen. Second, the demonstration was still very chaotic at that point, with officers intermingled with demonstrators. Projectiles were still being thrown and some demonstrators were in clear non-compliance with the officers' orders that they quickly disperse from the area. Third, at the time he used force, NE#6 had a fractured knee and was almost certainly suffering concussion-like symptoms. This is relevant when considering what a reasonable officer in his place would have done and provides insight into why NE#1 reacted as he did to the perceived threat posed by the individual who knocked into him.

Given the combination of these factors, OPA finds NE#6's second use of force was also reasonable, necessary, and proportional under the circumstances.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #6 – Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reason as above, (see Named Employee #2 – Allegation #1), OPA recommends that this allegation should be Not Sustained as a Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #7 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reason as above, (see Named Employee #2 – Allegation #1), OPA recommends that this allegation should be Not Sustained as a Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #7 – Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reason as above, (see Named Employee #2 – Allegation #1), OPA recommends that this allegation should be Not Sustained as a Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #8 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

Most of the uses of force by NE#8 fell within the above recommended Management Action. OPA finds that two of them, however, were distinct enough to warrant separate analysis. Contrary to the other usages of the bicycle to push demonstrators, both of these uses of force constituted strikes.

On the first occasion (see NE#8 video clip, at 10:22-10:28), NE#8 lifted up the front tire of his bicycle, held it in front of his body, and struck an individual wearing a navy blue shirt. At the time, the individual, who had been previously walking backwards facing the officers while linking arms with other demonstrators, had turned around and was walking away. Notably, the individual did so in response to multiple directions from NE#8 that he turn around and move. However, it was at that point that NE#8 struck the individual in the back with his bicycle.

On the second occasion, which occurred approximately seven minutes later (see NE#8 video clip, at 17:13-17:23), NE#8 turned towards an individual who was holding a bicycle while walking up the street. The individual was facing away from him at the time. NE#8 lifted his bicycle up and struck forward into the individual. At the time he did so, he yelled “move back.” He then pushed into the individual again with his bicycle. He had given no prior orders to that individual to move before using force. Immediately after he yelled: “Get the fuck back.” He grabbed a hold of the individual’s backpack and pushed him forward, saying: “get your ass moving go. Get your fucking ass moving.” This



individual was standing alone, was not engaged in any violence, and was largely moving. He presented significantly less of a threat to NE#8 than the individual with the blue shirt; however, NE#8 used even more force.

In evaluating these uses of force, OPA recognizes the chaotic nature of the protests and violence towards officers, but this did not provide officers with carte blanche to use whatever force they wanted whenever they chose to do so. Force must still be reasonable, necessary, and proportional to an articulable threat. Even if the force NE#8 used was reasonable and necessary under both circumstances (with the second circumstance being a much closer call), OPA finds that it was not proportional. Specifically, a bicycle strike was not proportional when used on the individual with the blue shirt who was walking away or the individual with a bicycle who was facing away from NE#8 and not causing harm to anyone.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #8 – Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reason as above, (see Named Employee #2 – Allegation #1), OPA recommends that this allegation should be Not Sustained as a Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #8 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

NE#8 used profanity towards demonstrators while directing them to move. He told them to “start fucking running” and to “get your fucking ass moving.” While numerous officers used profanity throughout the response to this demonstration, including as discussed herein, NE#8’s profanity was notable for its quantity, its tenor, and its interspersing between multiple uses of force.

Unlike NE#5, NE#8 did not concede that his profanity was potentially inconsistent with policy and, instead, defended it as appropriate. OPA disagrees and finds that NE#8’s statements were contrary to policy.

While isolated usage of profanity would have been understandable given all that was going on, NE#8 went beyond this with his comments. Moreover, it does not appear to OPA that a Training Referral is appropriate given NE#8’s lack of ownership concerning his statements.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #9 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reason as above, (see Named Employee #2 – Allegation #1), OPA recommends that this allegation should be Not Sustained as a Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #9 – Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reason as above, (see Named Employee #2 – Allegation #1), OPA recommends that this allegation should be Not Sustained as a Management Action.

Recommended Finding: **Not Sustained (Management Action)**