



PUBLIC REPORT

STREET PROTEST AND POLICE USE OF FORCE

September 26, 2000

DOWNTOWN BOISE

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by

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SUMMARY

The Office of the Community Ombudsman received and investigated three separate complaints arising from the actions of protesters and police officers in downtown Boise on September 26, 2000. The incident itself, which gave rise to the complaints, was, in fact, a series of incidents that occurred over the span of approximately four hours and covered nearly 18 square blocks. The sheer number of people involved and the complexity of the situation made the investigation of these complaints difficult and time-consuming.

The primary nature of the complaints had to do with the use of force by members of the Boise Police Department. The ombudsman found that the use of force by Boise Police officers during this entire incident was both reasonable and necessary to make lawful arrests, protect the safety of officers, and gain control of resistive individuals.

The ombudsman also found that the primary impetus for confrontation and the use of force by police officers came from the protesters themselves, not the police. In fact, the police made the decision, in the initial stages of the event, not to take enforcement action, but to facilitate the protesters' exercise of free speech and their safe movement through downtown. It was not until the protesters refused to keep moving through intersections that the police began to make arrests. Even then, officers did not use force until they met resistance or were assaulted by demonstrators.

SITUATION SYNOPSIS

On Tuesday, September 26, 2000, at approximately 4:00 p.m., a group of protesters began to gather in a park located south of the State Capitol Building (across Jefferson), between Capitol Blvd. and 6th Street. The crowd, which began small, swelled to approximately 100 people by about 6:00 p.m. At that time, members of the demonstration started to stand in the street and disrupt traffic near the corner of Capitol and Jefferson.

The demonstrators, as a group, walked through the streets of downtown Boise in what amounted to a parade without a permit. However, this parade had no stated route. Most of the demonstrators walked in the lanes of traffic as they went along. Officers from the Boise Police Department diverted traffic around the demonstrators and attempted to facilitate their movement through the downtown core without serious risk of accident, injury, or major disruption of traffic.

The protesters stopped briefly in the middle of the intersection of Capitol and Idaho, but resumed their march after police officers ordered them to clear the intersection. When the crowd reached the intersection of 6th and Front Street, eight to twelve of the demonstrators sat down in the intersection across two lanes of Front. The other three lanes of Front were already blocked by a marked Boise Police vehicle and its

driver. The remaining 100 or so demonstrators stood in the intersection at the same time. After a few minutes and several attempts by the police to convince the demonstrators to clear the intersection, officers began arresting and handcuffing the seated demonstrators. About six seated demonstrators, along with one or two others, were arrested for failure to disperse. Another demonstrator, with a sign raised over his head, approached one of the arresting officers from behind. This demonstrator was arrested for assault on an officer and resisting and obstructing an officer. During the arrest of these demonstrators, several officers from the Boise Police, Garden City Police, Meridian Police, and Idaho State Police began arriving in the intersection in response to a call by the incident commander for emergency assistance.

The remaining demonstrators left the intersection at 6th and Front and began to wander west on Front and then north on either Capitol or through "the Grove." By this time, a number of additional officers and command staff arrived downtown, including members of the Boise Police Special Operations Unit. After parading through downtown some more, a crowd of approximately 75 demonstrators arrived at the intersection of 9th and Front. Several arrests were made at this location.

The crowd of demonstrators dwindled down to less than 50 people and slowly made its way north to a location on the west side of 8th Street between Bannock and Jefferson. After an hour or so of negotiations between the remaining demonstrators and a Boise Police officer, the crowd finally dispersed.

COMPLAINTS FILED

On October 2, 2000 three individuals came to the Office of the Community Ombudsman and filed written complaints about police actions during the protest in downtown Boise on September 26, 2000. All three complainants had been arrested during the September 26th incident. The ombudsman met with the three complainants and received their complaints. Their complaints were as follows:

Complaint #1

Complainant #1 alleged that he asked a police officer why he was arresting people sitting in the middle of the intersection at 6th and Front. The complainant alleged that the officer's response was to stand up and shove him with both hands. He further alleged that, as he was trying to regain his balance, another officer yelled at him from behind and sprayed him in the face with pepper-spray. The complainant said that he ran from the spray and alleged that the second officer grabbed him around the neck in a choke hold, and threw him onto the pavement. The complainant further alleged that the officer pushed his face into the pavement and grabbed his hair, even though he claimed he was not resisting. Finally, the complainant alleged that he told the officer that he could stand, but was dragged across the pavement to a police car.

Complaint #2

It was alleged by complainant #2 that she verbally protested the arrest of a man at the intersection of 9th Street and Front Street. The complainant said that she and was surrounded by officers who pushed her and poked her with night sticks. She further alleged that one of these officers grabbed her breast, that she was struck in the thighs and knees, and thrown to the ground where the officers stepped on her back and legs.

Complaint #3

Complainant #3 said that he saw three officers tackle a man push him into the bushes along the sidewalk just north of the intersection of 9th and Front. The complainant alleged that he witnessed officers tackle another demonstrator into the same bushes. He said that he put his arm out and yelled in protest and that his arm must have come into contact with one of the officers. The complainant alleged that he was tackled by three officers into the same bushes, struck on the side and the back of his head, and placed face down on the sidewalk. He alleged that an officer put all of his weight onto his neck and head for about two minutes. He also alleged that this officer refused to provide his name when asked for it.

INVESTIGATION

In addition to interviewing the three complainants, the ombudsman interviewed several citizens who came forward and offered statements about what they had witnessed during the demonstration. None of them actually saw any of the three specific incidents involving the complainants.

All related police reports and associated supplements were obtained, carefully read, and analyzed in order to determine which officers were involved. Dispatch records (computer-aided dispatch logs and audio tapes of radio traffic) were also obtained and reviewed by the ombudsman to further determine the identity and roles of involved officers. The ombudsman reviewed internal reports generated by the Boise Police Department in order to learn more about the incident. The ombudsman also viewed all available photographs and video images relating to this incident. These were obtained from both news media broadcasts and private individuals who filmed the event.

From these records, tapes, pictures, and videos, the ombudsman identified which officers were involved in the incident. It was found that, initially, only about five officers were assigned to monitor the demonstration as it remained stationary in the park across from the State Capitol. Once the crowd began moving and blocking streets, the number of officers assigned to the incident increased. By the time that the protesters blocked the intersection at 6th and Front Streets and arrests were being made, nearly 20 officers were involved. All told, approximately 38 officers from at least four different agencies were deployed to

assist with restoring the peace in downtown Boise. The ombudsman was also able to identify those officers who may have had contact with one or more of the three complainants, or were probably in close proximity to their arrests and, therefore, may have witnessed all or part of the incidents complained about. The ombudsman then interviewed six of the Boise Police officers who were involved in the incident.

FACTUAL CONCLUSIONS

Based on the preponderance of the evidence, the ombudsman has drawn the following factual conclusions:

1. The Boise Police Department (BPD) had little advance information about the protest, other than where and when it was scheduled. The primary concerns of the police in advance of the protest were the possible disruption of traffic at the intersection of Jefferson and Capitol.
2. No additional officers were brought on duty in order to handle potential acts of civil disobedience stemming from the protest. In fact, due to the search of the Boise River being performed at the same time in connection with a recent homicide, considerable BPD resources and management attention were focused elsewhere at the time of the demonstration.
3. Once the demonstrators left the park in front of the State Capitol, the tactical response of BPD was to divert traffic around the demonstrators. The strategy was to allow the defacto parade to continue. The rationale was that the demonstrators would eventually disperse. Even though the demonstrators were committing pedestrian traffic infractions, there appears to have been a conscious decision on the part of the police supervisor at the scene not to use an enforcement approach in dealing with the crowd. During the initial stages of the downtown "walkabout" two plainclothes officers and two or three uniformed officers were assigned to deal with the crowd and related traffic issues.
4. The first sign of any difficulty was at the intersection of Capitol and Idaho. This was after the crowd of demonstrators had marched around downtown for 20 to 30 minutes. At this intersection, a significant portion of the crowd came to a halt in the crosswalk across Capitol Blvd. One demonstrator began to hang plastic barrier tape across Capitol from light pole to light pole. It was at this point that the first order to disperse was given by an officer. Additional uniformed officers were called to the scene and the demonstrators were, in some cases, physically escorted out of the street. It was reported that the mood of the crowd shifted at this point and became more defiant and aggressive.
5. The crowd then walked south on Capitol for a block or two before crossing over to 6th Street. One of the officers went ahead of the crowd and, anticipating that they would turn westbound onto

Front, blocked two lanes on the northern side of Front. Instead of turning, however, a small group of demonstrators sat down across the remaining lanes of Front Street while the rest of the crowd stood in the intersection. Additional patrol cars quickly arrived and the intersection was shut down. The scene was very chaotic. The demonstrators were chanting and making loud noises with drums and other instruments. Multiple police cars were arriving with sirens blaring. Front Street was backed up for several blocks, as was traffic on 6th. The initial officers on scene (probably six to eight) were vastly outnumbered by the crowd. Some of these officers told the individuals sitting on the ground that they would be arrested if they did not move.

6. A police watch commander arrived on scene and quickly attempted to get the crowd to move across Front and south on 6th Street. He direct three police cars to drive towards the crowd with lights and sirens on. The police cars stopped a few feet from the edge of the crowd and then edged towards the demonstrators with lights and sirens still on. This tactic had little or no impact on the crowd.
7. Several officers then walked over to the persons seated in the intersection and told them they were under arrest. Six to eight demonstrators were handcuffed. This action appeared to have some effect on the crowd, as some of those sitting and standing in the intersection began to back away from the officers. It was as the seated demonstrators were being handcuffed that one demonstrator (complainant #1) advanced towards the back of an arresting officer. Two officers reported seeing complainant #1 moving rapidly and carrying a sign raised above his head as if to strike the officer. The officer put his hand out in a protective move and a second officer ran over and tried to grab hold of complainant #1. One of the officers sprayed complainant #1 with pepper spray, hitting him on the chin and neck. To avoid the spray, the other officer let go of complainant #1, who broke free and began to run away. He was then tackled to the ground by the same officer who had previously had hold of him. Several other arrests were made at the intersection and all those arrested were transported to jail in patrol cars. The crowd of demonstrators moved west of Front and then north on Capitol and through "the Grove".
8. The watch commander gathered all involved officers, which by this time numbered nearly 20, near the intersection of Capitol and Bannock. The officers were grouped into squads, one squad to a car. They also received orders to deploy themselves in a skirmish line formation when and if they encountered the demonstrators. Two sergeants were assigned to supervise the skirmish line and a small group of officers were formed into an arrest team. This force of BPD, Garden City, and Meridian officers were then told to respond to the intersection of 9th and Front, where it was reported that the demonstrators were again blocking traffic and vandalizing vehicles. In fact, one BPD officer had observed two juveniles jump onto the hood of a car near the intersection of Front and 8th Street.

9. When the force of officers arrived at the intersection of 9th and Front, they deployed out in a skirmish line and attempted to keep the intersection clear. Eventually they were successful in directing the crowd north on 9th Street, past the intersection of Front. By this time, additional officers (including members of the BPD Special Operations Unit), the chief, and other command staff had arrived on scene.
10. Police commanders ordered the arrest team to take one person into custody who had been observed blocking the roadway. This person also appeared to be directing the actions of other demonstrators who were similarly blocking the road. This individual saw the police arrest team coming for him and began to run away. Police caught up with him and took him to the ground near the juniper bushes that run behind the sidewalk on 9th Street, between Front Street and Grove. Some members of the crowd saw this arrest taking place and began to move towards the arrest team. The skirmish line of officers then formed a barrier between the arrest team and the rest of the demonstrators.
11. One of the first demonstrators to encounter the skirmish line was complainant #2. This person, a female, approached the police line and tried to push her way past one of the officers. The officer told her to back off and pushed her with his forearm. She responded by slapping the officer across the left side of his face with her right hand. The officer grabbed her arm and pulled her behind him. Two other officers wrestled her to the ground and handcuffed her.
12. Another nearby officer saw complainant #2 hit the officer. He reached out to grab her, but was hit from behind by a male demonstrator, complainant #3. Both the officer and complainant #3 fell into the juniper bushes. Two officers used their batons to deflect complainant #3's fists as he swung them at them while he was lying in the bushes. Complainant #3 was struck by a baton in the area of his collar bone at least once. Both the officer and complainant #3 were removed from the bushes. Complainant #3 was put face down on the sidewalk.
13. As complainant #3 was placed on the ground, one of the officers put his knee onto the upper part of his back. This officer was on the north side of complainant #3 with his back to the crowd of other demonstrators. The officer, feeling vulnerable with his back to the crowd, got up, stepped over complainant #3's legs, and dropped back down onto the man's back with one knee. This put the officer on the south side of complainant #3, facing toward the crowd. In the meantime, a second officer handcuffed complainant #3.
14. After he was handcuffed, complainant #3 was moved away from the other demonstrators to wait for transportation to the Ada County jail. At some point between when he was handcuffed and when he was placed into a patrol car for transport, he asked for and received the name of the officer who had placed his knee onto his back.

15. A few other arrests were made at that location and the dwindling crowd made their way north and one block east. They ended up in a bank parking lot on the west side of 8th Street, between Bannock and Jefferson. After an hour or so of negotiations and ever-dwindling numbers, the remaining protesters walked away and the incident was over.
16. Other than low-level escort holds, pushes with hands and/or batons, and handcuffing, the only force reported by the officers was one deployment of pepper spray (6th and Front), thrusting strikes with a baton (9th and Front), and a take-down (6th and Front) using a tackle, body weight, and/or arm twisting. The knee drop (9th and Grove) onto the demonstrator's shoulder and/or neck was not intended to be a strike, but a tactic used while handcuffing a person lying prone on the ground.

ANALYSIS AND FINDINGS

Complaint #1

ANALYSIS:

There were two separate, but connected, instances in which force was used against this complainant. The first was the combined grab by one officer and use of pepper spray by another officer. The second use of force was the tackle to the ground.

In the first case, both officers concluded that complainant #1 was assaulting one of them with the wooden handle and sign that he was carrying. They both feared that the officer was in imminent danger of being injured should he be struck with the stick and/or the sign. Complainant #1 admitted approaching the officer to confront him about arresting people blocking the intersection. In the opinion of the ombudsman, it was reasonable for both officers to conclude that one of them was in immediate physical danger. Section 1.0101 of the BPD Policies and Procedures Manual (PM) states, in part, "Officers shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance." Based on their reasonable conclusion that the officer was being assaulted by complainant #1, either officer was justified in using a reasonable and necessary amount of force to prevent him from hitting the officer. Furthermore, it is the opinion of the ombudsman that both the arm grab by one officer, and the use of pepper spray by the other, were reasonable and necessary force, given the totality of the circumstances.

As complainant #1 was struck with the pepper spray, he pulled away from the officer who had grabbed his arm. At the same time, that same officer loosened his grip and turned away to avoid the spray. Complainant #1 then ran across the intersection and away from the officer. This officer, who had already

informed complainant #1 that he was under arrest and had placed him into physical custody, pursued him on foot to prevent his escape. PM Section 1.0100 allows an officer to use, “only the amount of force that is reasonable and necessary . . . [to] affect a lawful arrest, and/or gain control in any lawful circumstance.”

The officer grabbed complainant #1 by the shoulders and pulled him to the ground. Then he and two other officers turned complainant #1 onto his stomach and handcuffed him. Given the complainant’s flight from arrest and his previous assaultive action towards an officer, the amount and nature of force used to gain control over him was, in the opinion of the ombudsman, both reasonable and necessary.

Complainant #1 also alleged that, once handcuffed, he was dragged to a police car, rather than being given an opportunity to walk there. One officer acknowledged that he and his assist officer dragged complainant #1 to the police car. However, the evidence indicates that complainant #1 was told to stand and given the opportunity to walk to the car under his own power. Under the circumstances (a large, hostile crowd and a blocked intersection), it is the opinion of the ombudsman that the officers were justified in dragging complainant #1 to the car after he failed to stand up and walk.

FINDING:

Use of force: **EXONERATED**

Complaint #2

ANALYSIS:

Complainant #2, a female, alleged that excessive force was used when she was arrested, taken to the ground, and put into handcuffs. She also alleged that one officer grabbed her breast as she was standing in front of him, just prior to her arrest. The evidence makes it very clear that complainant #2 struck an officer on the left side of his face immediately before she was taken into custody. In fact, it was this battery of an officer that caused her arrest. PM Section 1.0100 permits officers to use reasonable and necessary force to arrest and control a person under lawful circumstances. In this case, the arrest of complainant #2 was clearly lawful. Given the near-riot conditions surrounding her arrest, officers acted quickly and forcefully to bring her under control and into physical custody. One officer grabbed her by the arm and pulled her off balance and towards the arrest team standing behind him. Two other officers took her to the ground and twisted her wrists to get her to roll over onto her stomach so that she could be handcuffed. The evidence shows that she actively resisted the officers’ attempts to bring her under control and handcuff her. In the opinion of the ombudsman, the force used against complainant #2 was reasonable and necessary to arrest her and prevent her from committing any further acts of aggression towards an officer.

Complainant #2's allegation that the officer grabbed her breast cannot be proved or disproved based on

available evidence. One officer testified that he pushed her away a couple of times as she approached the police skirmish line. While the officer does not remember touching her breast, he did push her in the upper body area. It is possible that, as he pushed her back, the officer touched her on the breast. Given the circumstances of a hostile crowd and a person attempting to push her way past a police skirmish line, it is the opinion of the ombudsman that the officer was completely justified in pushing complainant #2, regardless of where the officer's hand actually touched.

FINDING:

Use of force: **EXONERATED**

Complaint #3

ANALYSIS:

Complainant #3 alleged that he was thrown into the bushes, pushed onto the ground, and struck in the back of his neck by an officer's knee. Complainant #3 claimed that this force was excessive. He also alleged that an officer refused to identify himself when requested.

Complainant #3 placed himself into the middle of a situation in which police officers were being assaulted, arrests were being made, and force was being used to overcome active resistance. The evidence supports the conclusion that he made some sort of physical contact with an officer, either with a push, a grab, or a shove. This contact came as the officer was assisting in the arrest of a woman who had struck an officer in the face. Complainant #3 told the ombudsman that he was attempting to intervene in the woman's arrest.

Given the dynamic and threatening nature of the circumstances surrounding complainant #3's interference in an arrest, it is the opinion of the ombudsman that reasonable and necessary force could be used to arrest him for obstruction and physically restrain him from further interference. Complainant #3's contact with the officer threw the officer off balance and knocked him into the bushes. It is the ombudsman's opinion that the force used to push complainant #3 into the bushes was reasonable and necessary to protect the safety of other officers and bring him under control, as defined by PM Section 1.0100.

Once complainant #3 was in the bushes, he actively resisted officers' attempts to subdue him. He flailed his arms and swung his fists. Two officers responded by jabbing him several times with their batons. Given the resistance offered by complainant #3 and the circumstances surrounding it, it is the opinion of the ombudsman that the force used was both reasonable and necessary in order to protect the officers from injury and to bring complainant #3 under control, as defined by PM Section 1.0100.

Within a few seconds, officers took complainant #3 out of the bushes and put him in a prone position on

the sidewalk. Complainant #3 continued to verbally berate the police and actively resist their attempts to handcuff him. One officer was crouching over complainant #3 and attempting to handcuff him. A second officer went to the north side of him and placed his knee on complainant #3's back, near the middle of the shoulder area. This placed the officer between complainant #3 and the crowd, with his back to the crowd. The officer got up and, crouching, stepped over complainant #3 and repositioned himself on the south side of him. The officer dropped his knee back down on complainant #3's back and quickly looked up to face the crowd. In placing his knee on complainant #3, the officer dropped about 15 to 18 inches and landed his knee near the top of complainant #3's back or at the base of his neck.

Given the preponderance of the evidence, it is the ombudsman's opinion that the officer's knee strike on complainant #3's back or neck was the result of the officer's reasonable attempt to control complainant #3. It is also the ombudsman's opinion that the knee came down with slightly more force than was necessary, however this was accidental and not a violation of PM Section 1.0100.

Finally, complainant #3 complained to the ombudsman that the officer refused to identify himself when asked. PM Section 21.0123 requires officers to supply their name and/or identification number when requested by a member of the public. Complainant #3 claims that he asked for the officer's name immediately after the officer took his knee off his back. This happened on the sidewalk, near the bushes, and within a few feet of the police skirmish line and the crowd.

The officer, in his testimony, said that he furnished his name to complainant #3 just prior to when complainant #3 was transported from the scene to the jail. A second officer testified that complainant #3 asked the officer for his name and that the officer gave it to complainant #3 right before he was transported to jail. This would have taken place about one-half block away from the site of complainant #3's arrest, and several minutes later.

Assuming that all three accounts of this request for identification are true, it is the opinion of the ombudsman that the officer complied with the requirements of PM Section 21.0123. Given the situation and the location of complainant #3's initial request for the officer's name, it was reasonable for the officer to delay answering. The officer's primary concern at that point should be for the safety of officers, arrestees, and the public. He needed to get complainant #3 up off the sidewalk and into a more secure location away from the crowd. It is the finding of the ombudsman that, by furnishing his name to complainant #3 prior to when he was transported to the jail, the officer complied with the requirements of PM Section 21.0123.

FINDINGS:

Use of Force: **EXONERATED**

Failure To Identify: **UNFOUNDED**