



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

October 30, 2008

Richard Rosenthal  
Office of the Independent Monitor  
Wellington Webb Municipal Office Building  
201 W. Colfax Ave., Dept. 1201  
Denver, CO 80202  
SENT VIA EMAIL

Re: Request for OIM and IAB investigation

Dear Rich:

I write regarding the events of the evening of August 25, 2008, when hundreds of people were detained, and nearly one hundred arrested, by Denver Police Department officers. We respectfully request an Internal Affairs Bureau investigation regarding the following:

- 1) Whether DPD officers departed from the truth by making sworn statements that a dispersal order was given and disobeyed at 19:30 hours at 15<sup>th</sup> and Court Street when DPD supervisors have testified that no such order was ever given?
- 2) Whether DPD's "spontaneous event" policy was violated by the failure to give a dispersal order and the opportunity to disperse?
- 3) Whether DPD improperly withheld 15 minutes of audio dispatch tape that recorded significant and arguably exculpatory evidence documenting the critical opening minutes of the incident on August 25, 2008?

In recent weeks, the video, audio and testimonial evidence introduced in the criminal trials arising from the August 25<sup>th</sup>, 2008 arrests has confirmed initial early observations and reports regarding the events of that evening. Video taken from a mounted camera on 15<sup>th</sup> Street shows that people began moving from the Greek Amphitheatre in Civic Center Park across Colfax, and down 15<sup>th</sup> Street, at approximately 7:11 p.m. The video shows that while some people were walking down 15<sup>th</sup> Street itself, at the same time hundreds of persons including protestors, members of the press, legal observers, curious onlookers, and bystanders were walking on the sidewalks along 15<sup>th</sup> Street. As these individuals moved northwest on 15<sup>th</sup> Street, they were blockaded by a police line that had formed across 15<sup>th</sup> Street to the southeast of Court Place. Almost immediately

after individuals had moved down 15<sup>th</sup> Street, officers swept in behind them and formed a police line across 15<sup>th</sup> Street to the northeast of Cleveland Street, blockading hundreds of people onto a short section of 15<sup>th</sup> Street with no egress.

Video evidence and a recently uncovered audio dispatch tape confirms that these hundreds of individuals had no exit from 15<sup>th</sup> Street by 7:14 p.m. It appears there was approximately a three (3) minute window from the time that people first walked down 15<sup>th</sup> Street and the sidewalks (7:11 p.m.), until the time that police had trapped everyone inside of police lines (7:14 p.m.). The time-stamped video and audio evidence is especially important as Commander Deborah Dilley and other supervisory officers have testified repeatedly that they cannot recall and did not record the precise time of any of these critical events.

When effectuating the arrest of individuals, DPD officers completed a probable cause affidavit on the General Sessions Summons and Complaint form, and also gave a "video probable cause" statement, both of which were made under penalty of perjury. In those statements, officers swore that individuals arrested were given an order to disperse on 15<sup>th</sup> Street at "1930 hours" by Sergeant Anthony Foster, with which they failed to comply.

In many of the video probable cause statements, DPD officers went further and stated that not only was an order to disperse given at 7:30 p.m., but described with particularity that the order was delivered via amplified sound. Such averments include, but are not limited to, sworn statements by Officer Booten that an order to disperse was given "Verbally, and through the PA system," statements by Deputy Safe that the order was given "By speakers," statements by Officer Carlock that the order was given "over a loud speaker three times," and statements by an unidentified deputy (#1693) that a dispersal order was given, "by microphone, by a loudspeaker."

Contrary to these sworn statements, legal observers, arrestees, detainees and media trapped inside of the police lines on 15<sup>th</sup> Street, and others like myself outside of the cordon, reported that they never heard any dispersal order given at 7:30 p.m. or any other time, nor were people given any opportunity to disperse. Cmdr. Dilley has since confirmed these reports, stating in her sworn testimony that no dispersal order was ever given over amplified sound at 15<sup>th</sup> and Court. Sergeant Tony Foster, who allegedly gave this order, likewise testified that it was not given. The sworn testimony of Cmdr. Dilley and Sgt. Foster directly contradicts the statements made by DPD officers in the probable cause affidavits and videos.

In addition, the City turned over audio dispatch tapes in one-hour increments: from 8 p.m. to 9 p.m., from 9 p.m. to 10 p.m., and from 10 p.m. to 11 p.m. The City also produced one audio dispatch prior to 8 p.m., however, unlike all the other one-hour tapes, the first 15 minutes of that tape was missing, leaving only the time period from 7:15 p.m. to 8:00 p.m. The court subsequently ordered the

withheld portion of the tape to be produced, and it contained significant and arguably exculpatory evidence regarding the timing of when the hundreds of persons were trapped inside of police lines. The court also ordered the City to produce the dispatch tape from 6 to 7 p.m., which the City had also previously withheld.

The Denver Police Department Operations and Procedure Manual makes clear that in responding to a “spontaneous event or incident,” clear orders are to be given before taking any action. In pertinent part, DPD OPM § 108.08(6)(a)(3) states:

When possible, clear instructions shall be communicated to the crowd. Unless there is an immediate risk to public safety, or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with police commands before action is taken.

Furthermore, the DPD Crowd Management Manual Sec. 2 requires that for “spontaneous event management,” law enforcement officers “will make every effort to differentiate between individual misbehavior and actions of the crowd in general.”

Persons on the sidewalks surrounding 15<sup>th</sup> Street had a clear First Amendment right to be present on the sidewalk, whether they were engaged in free speech activity, recording police and citizen interaction, or just watching. The First Amendment right to simply observe or to record police actions from traditional public forums like a sidewalk is memorialized in a training bulletin issued to all Denver officers by DPD Chief Gerald Whitman on February 12, 2007, which states in part:

Members of the public have the right to observe police officers so long as members of the public do so in a way that does not interfere with the officers’ ability to do their job. The public also has the right to record, videotape, photograph, and otherwise document officers and individuals contacted or detained by officers in public places...Officers will respect this right to observe and refrain from detaining or arresting individuals who are only observing police actions in public places.

As the documentary evidence shows, by approximately 7:14 p.m. officers had corralled hundreds of persons on 15<sup>th</sup> Street and the adjoining sidewalks which included protestors, media, legal observers, onlookers, and bystanders who were given no opportunity to exit. As Cmdr. Dilley and Sgt. Foster have now testified, no general dispersal order was given at 7:30 p.m., nor were any orders given over amplified sound or loudspeaker. Even if arresting DPD officers mistakenly and erroneously believed that an order of some kind was given at 7:30 p.m., however, it is unclear how any reasonable officer could have believed that there was probable cause to arrest any person for failing to comply with an order to

disperse that was purportedly given 16 minutes *after* all egress had been blocked by police lines, when no one was able to “disperse” under any circumstances.

Pursuant to DPD OPM § 108.08(6)(a)(3), there appears to be no reason that amplified and audible orders could not have been given over a loudspeaker, and the opportunity to comply with those orders afforded, between the time individuals were blocked in on 15<sup>th</sup> Street at approximately 7:14 p.m., and the time that officers started to make individual arrests or releases some time later.

In light of these facts, we respectfully ask the Internal Affairs Bureau to investigate, and the Office of the Independent Monitor to monitor the investigation, of the following questions:

1. Did DPD officers depart from the truth when they swore under penalty of perjury that an order to disperse was given at 15<sup>th</sup> Street at 19:30 hours by Sgt. Foster, and that the arrestee disobeyed that order, when in fact DPD supervisors (including Sgt. Foster) have testified that no such order was ever given?
2. Did the failure to give that order, and the related failure to give people the opportunity to disperse before making arrests, violate DPD OPM § 108.08(6)(a)(3) regarding spontaneous events?
3. Did the DPD improperly withhold 15 minutes of dispatch audio from 7:00 p.m. to 7:15 p.m., which was directly relevant to the events of August 25, 2008 and to the crimes with which the defendants were charged?

I look forward to your response at your earliest convenience. While I believe all the pertinent evidence related to this complaint is contained in documentary video, audio and testimonial<sup>1</sup> evidence, if your office would like to arrange to speak with individual detainees or arrestees, please let me know.

Sincerely,



Taylor Pendergrass  
Staff Attorney, ACLU of Colorado

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<sup>1</sup> I understand that a transcript of Cmdr. Dilley's and Sgt. Foster's testimony is being prepared.