CITY OF MIAMI CIVILIAN INVESTIGATIVE PANEL
REPORT ON THE FREE TRADE AREA OF THE AMERICAS SUMMIT

July 20, 2006

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CITY OF MIAMI ELECTED OFFICIALS

Manuel A. Diaz, Mayor

Angel Gonzalez, Chairman, District 1

Linda M. Haskins, District 2

Joe Sanchez, District 3

Tomas Regalado, District 4

Michelle Spence-Jones, District 5
Dear Mayor and City Commissioners:

After considerable effort, teamwork and dedication, the Civilian Investigative Panel (CIP) has completed its task of conducting an in-depth and objective investigation into police actions in preparation for and during the 2003 Free Trade Area of the Americas (FTAA) Summit in Miami. The CIP members and staff have been resolute in their commitment to provide a meaningful and effective document that the law enforcement community in general and the Miami Police Department (MPD), in particular, can use in developing and/or improving police-community relations, policies and procedures that enhance delivery of law enforcement services. The Panel wishes to extend its appreciation to the several organizations, agencies and individuals that contributed their advice, expertise, and/or testimony to this project.

The attached Report provides an account of the creation and challenges faced by the CIP; a comprehensive, historical analysis of law enforcement reports, activities, and actions surrounding the FTAA; and the methodology by which issues were identified and addressed. It also analyzes the successes, miscues, and faults that resulted from planning and policing the FTAA event. Finally, the report makes detailed, specific recommendations directed to the Miami Police Department. The recommendations are intended to provide for a process of effectively dealing with mass demonstrations while recognizing the duties, rights, and responsibilities owed to and by citizens, demonstrators, the business community, and law enforcement officers in an effort to build safer communities while fostering democracy and constitutional protections. They are also intended to bring awareness to the MPD that it must be ever vigilant in its duty to monitor the individual and collective officers’ conduct.

The CIP welcomes your comments, thoughts, suggestions, questions, or any feedback specific to matters presented in this report.

Respectfully,

Larry R. Handfield, Chairperson
# TABLE OF CONTENTS

I. **CIP PANEL MEMBERS** ..................................................................................................................................

II. **CIP ADMINISTRATIVE PERSONNEL** ..........................................................................................................

III. **CIP INDEPENDENT INVESTIGATORS** ........................................................................................................

IV. **EXECUTIVE OVERVIEW** ............................................................................................................................

V. **RECOMMENDATIONS** ....................................................................................................................................

VI. **SUBCOMMITTEE REPORTS**
   - Inter/Intra Agency Communications ........................................................................................................
   - Complaints ....................................................................................................................................................
   - Policies and Procedures ..............................................................................................................................

VII. **APPENDIX**
    - Appendix #1 – Summary of Professor Donald Jones’ January 19, 2006 Testimony before the Civilian Investigative Panel ........................................................................................................
    - Appendix #2 – Summary of Court Litigation on FTAA Cases ........................................................................


CIP PANEL MEMBERS

Larry R. Handfield, Esquire is the founding partner of The Handfield Firm. Larry R. Handfield is a member in good standing of The Florida Bar; the American Bar Association; and the Dade County Bar Association. He serves as Chairperson of the Civilian Investigative Panel (CIP) for the City of Miami and the Public Health Trust/Jackson Health Systems, the nation’s largest hospital. As Chair of the Public Health Trust, Mr. Handfield oversees an annual budget of $1.7 billion and over 11,000 employees. Chairman Handfield received a Bachelor's Degree from Bethune-Cookman College, a Juris Doctorate from Howard University, and a Doctorate Degree of Law from Bethune-Cookman College.

Janet R. McAliley has spent a lifetime in community service. She served sixteen years as an elected member of the Dade County School Board and currently serves as Vice Chairperson of the CIP. In addition, Ms. McAliley is the past president of the Florida Immigrant Advocacy Center Board of Directors. Ms. McAliley received a Bachelor's Degree from the University of Florida.

Tanya J. Brinkley, Esquire is an attorney with Brinkley & Henrys, P.A. and is a Civil Traffic Infraction Hearing Officer for the 11th Judicial Circuit. She has been admitted to the Supreme Court of Florida and the United States District Court for the Middle and Southern Districts of Florida. Ms. Brinkley received a Bachelor's Degree from Howard University and a Juris Doctorate from the University of Miami.

Danny Couch has dedicated his life to community service and activism. He has spent the last twenty years on numerous municipal, county, and community non-profit boards in Miami-Dade County. Additionally, Mr. Couch has spent the last seven years as a deacon at the St. James Baptist Church in Coconut Grove, Florida.

Otis Davis is a retired police officer whose law enforcement career includes twenty-two years of service with the City of Miami Police Department and thirteen years of service with the Opa-Locka Police Department. Mr. Davis is currently working to restore and convert a former police precinct into a police officers’ museum. The museum will also house classrooms that aim to provide tutoring to students in the Overtown area.

Andrew Fishman, Esquire, a native of Miami, is an attorney in private practice, with considerable experience in litigation and health care issues. Previously, he served as an internal consultant to Vice President Al Gore’s National Performance Review, a group vested with the goal of reducing inefficiency and ineffective work methods within the Department of Labor. Additionally, Mr. Fishman has served on the Board of Directors for Greater Miami Legal Services, and he is actively involved in the Greater Miami Jewish Federation. He served as Founder and Chair of the Black-Jewish Alliance. Mr. Fishman obtained a Bachelor's Degree in Political Science and Urban Studies from Vassar College and earned his Juris Doctor and Master’s in Public Health from Emory University.

Rudy de la Guardia, Esquire is a partner in the law offices of Brooks, Frank & de la Guardia. He has held the rank of Ambassador Extraordinary and Plenipotentiary on Special Mission and Honorary Consul for the Republic of Panama. Mr. de la Guardia is a member in good standing of...
The Florida Bar and the United States District Court for the Southern District of Florida. He received a Bachelor's Degree from the University of Miami and a Juris Doctorate from Thomas M. Cooley Law School.

**Bess McElroy** is an active and highly respected individual who serves in numerous diverse community and professional organizations, as evidenced by her leadership in several of these groups. Most notable is the consensus she built among several community-based groups when she served as President of a local grassroots organization which led to the establishment of the CIP as an impartial citizen's oversight panel for the Miami Police Department—one of the few with subpoena power. She is committed and dedicated to serving her community. Ms. McElroy received her Bachelor's Degree from Florida International University and a Master's Degree from St. Thomas University.

**Timothy Moore** was born in Los Angeles, California and served in the United States Air Force as an Intelligence Officer. As an additional duty, he devoted time to various disciplinary panels reviewing both officer and airmen misdemeanors. Mr. Moore currently serves as President of Moore Overseas, based in Miami, Florida. He has worked for over 30 years throughout Latin America and the United States in the field of heavy construction and mining. Mr. Moore presided over an advisory group to the National Police in Colombia responsible for evaluating the disposition of expatriates arrested in that country. He presently serves on the Board of Directors for Grove Isle Condominium and is active with the Coral Gables Methodist Church. Mr. Moore graduated with a Bachelor's of Arts in Political Science from Occidental College.

**Thomas J. Rebull, Esquire** is an attorney with the law firm of Broad and Cassel. He is a member in good standing of The Florida Bar and recently served on its Code and Rules of Evidence Committee. Mr. Rebull received a Bachelor’s Degree from Boston University and a Juris Doctorate from the American University, Washington College of Law. He lives in the City of Miami with his wife and two daughters.

**Dr. Tangier Scott** is a Team Manager with Miami-Dade Community Action Agency with many years of professional experience. She is a national presenter in the area of Youth and Family Relations and a certified trainer of Kingian Nonviolence. Additionally, she is an adjunct professor at Nova Southeastern University and Florida Memorial University (formerly known as Florida Memorial College). Dr. Scott holds a Doctorate Degree in Child, Youth, and Family Studies from Nova Southeastern University, and a Master’s and Bachelor’s Degree in Criminal Justice and Public Administration, respectively, from Florida International University.

**Brenda B. Shapiro, Esquire** is an attorney at the Law Offices of Brenda Bernstein Shapiro specializing in Family Law. She is a member in good standing of The Florida Bar, the American Bar, and the Dade County Bar Associations. Ms. Shapiro received both a Bachelor's Degree and Juris Doctorate from the University of Miami. She has also served on and chaired the City of Miami Community Relations Board. As a community relations professional, Ms. Shapiro trained Miami Police Department cadets in community relations.

**Fred St. Amand** is the CEO of Valparaiso United Services, Inc. and Pax-Villa Funeral Home. He has been a prominent leader of the Haitian-American Community for over forty years and has worked directly with resident associations and community based organizations to improve the
quality of life in the Little Haiti area. Mr. St. Amand received a Bachelor's Degree from Southwestern State University.
CIP ADMINISTRATIVE PERSONNEL

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INTRODUCTION

The Civilian Investigative Panel (CIP) embarked on a fact-finding effort to review law enforcement actions undertaken by the City of Miami Police Department (MPD) and assisting law enforcement agencies during the demonstrations surrounding the Free Trade Area of the Americas Summit (FTAA) held in Miami, Florida, from November 17 - 21, 2003. This report presents the findings, analyses, and recommendations resulting from that independent, investigative review. The expectation is that this report will be considered by the MPD to enhance the development and implementation of policies for policing future large protests, demonstrations, and assemblies, and continuing those policies and practices that best serve the community.

At the outset, it must be noted that after protracted litigation, the CIP was ultimately unsuccessful in obtaining a copy of the Operational Plan that was prepared and utilized by the MPD for policing the FTAA. The CIP deemed the Operational Plan significant because, among other reasons, the MPD After Action Reports made repeated assertions that the Operational Plan contained policies governing the conduct of the MPD personnel and its assisting agencies. The CIP sought to evaluate the extent to which the Operational Plan addressed and provided for the protection of constitutional guarantees and coordinated training amongst the law enforcement agencies that assisted the MPD. Should the Operational Plan be released at a future date, the CIP will review the same and, if necessary, publish its comments and evaluation in an addendum to this report.

PURPOSE

The purpose of this report is to: (1) set forth findings with respect to all complaints filed with the CIP alleging police misconduct; (2) comment on the effectiveness of and limitations on the various mutual aid agreements entered into by the MPD and law enforcement agencies that rendered assistance to the MPD during the FTAA; (3) ascertain the nature and quality of the law enforcement command structure that was set in place for the FTAA; (4) examine the effectiveness of the communications systems between the MPD and its assisting law enforcement partners; (5) evaluate the Rules of Engagement adopted by the MPD, particularly with respect to the use of force and the use of less lethal weaponry; (6) assess the training provided by the MPD to its personnel and assisting agencies in preparing for the FTAA protests, particularly with respect to the preservation of First and Fourth Amendment rights of individuals who chose to assemble in a public forum; (7) identify systemic problems, if any, with regard to the mass arrests and processing of arrestees; and (8) ascertain to what degree, if any, the local media contributed to an apprehension that self-proclaimed “anarchists” would engage in acts of violence and vandalism.

METHODOLOGY
The CIP conducted several public hearings where sworn testimony and or statements were obtained from civilians, expert witnesses, and MPD officials; reviewed multiple volumes of MPD and other law enforcement agency reports; obtained and reviewed MPD training materials; reviewed hundreds of hours of video tapes of the FTAA demonstrations; obtained and analyzed pertinent MPD departmental orders; reviewed over 200 arrest affidavits pertaining to the FTAA protests; reviewed court records pertaining to the prosecution of individuals arrested during the FTAA protests; made inquiries and analyses regarding the MPD’s response to and compliance with findings and recommendations made by the United States Department of Justice in its investigation of the MPD pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141; obtained and reviewed depositions of MPD officials and other witnesses and documents generated in federal and state civil litigation arising out of the FTAA protests; and investigated and reached findings with respect to FTAA protest-related complaints filed with the CIP. (Some of the documents reviewed included, but were not limited to the Miami-Dade County Police Department After Action Report, Miami-Dade County Independent Review Panel Report, Seattle and Washington, D.C. Reports and the American Civil Liberties Union Report.)

Members of the Panel divided into separate subcommittees, addressed specific areas of concern, and made recommendations to the full Panel. In certain instances their work overlapped.

**FINDINGS**

1. The MPD received assistance from local, state, and federal law enforcement agencies in order to augment security during the FTAA. Many of the assisting law enforcement partners had entered into a mutual aid agreement with the MPD, thereby allowing such agencies to exercise police powers in the City of Miami.

2. For several months preceding the FTAA, the local media devoted considerable coverage to violent protests and wanton vandalism that had taken place in other locations where international economic conferences were held. Although not quantifiable, repeated television images of violent protestors at such events no doubt contributed to an apprehension that similar chaos and violence would befall the City of Miami during the FTAA.

3. The MPD prepared and disseminated to its partner agencies an Operational Plan for the FTAA. Subsequent to the FTAA, and after receiving complaints from citizens alleging police misconduct, including the violation of constitutional rights, the CIP sought to obtain from the MPD a copy of the Operational Plan via a public records request pursuant to § 119.07, Fla. Stat. (2003). After lengthy litigation, however, the Third District Court of Appeal ruled that the Operational Plan was exempt from public disclosure. Thus, the CIP is unable to comment upon the Operational Plan and how it influenced law enforcement activities during the FTAA.

4. The MPD issued Special Events Permits for various groups to stage public assemblies and other gatherings during the FTAA to express their views. There is no evidence that the MPD denied a permit to any group or otherwise unreasonably impeded the processing of
permits. The City of Miami Community Relations Board worked in tandem with the MPD to facilitate the permitting process.

5. Some individuals who wanted to attend forums for which a Special Events Permit had been issued were either prevented from or hampered in doing so by law enforcement officers from agencies other than the MPD. However, the MPD did nothing to assist such persons.

6. Except for a contingent of MPD undercover officers dressed in civilian attire, MPD personnel were clearly identified as MPD officers by wearing uniforms that displayed identification numbers on the front and rear. (During the course of the demonstrations, some markings faded or were marred by liquids tossed during demonstrations.) Officers from the assisting agencies did not, however, display identification, and therefore were not as easily identifiable.

7. According to records obtained from the Miami-Dade State Attorney’s office, 219 individuals were arrested and incarcerated during the FTAA protests. An analysis of the arrest affidavits and court records revealed that the overwhelming majority of the arrestees were charged with misdemeanors such as: unlawful assembly (31), failure to obey (83), obstructing a sidewalk or street (5), and loitering or prowling (25). There were 21 cases nolle prossed after Pre-Trial Intervention.

8. The State Attorney issued a nolle prosse or a “no-action” in 129 of the 219 cases, while many other cases were dismissed by the court. As of January 2006, only four of the arrests (one felony and three misdemeanors) have resulted in a conviction.

9. Orders to disperse or be subject to arrest were communicated via a bullhorn, which oftentimes proved to be an ineffective method for informing a crowd of people, particularly those toward the rear of the crowd.

10. When orders to disperse were issued, law enforcement officers did not provide clearly defined dispersal routes which, in turn, led to confusion and, in some instances, arrests and incarceration.

11. Less lethal weapons and munitions were utilized by law enforcement officers during the FTAA protests. At times, these weapons were deployed in a manner inconsistent with the manufacturer’s guidelines and user manuals, MPD Departmental Orders, Standard Operating Procedures, and constitutional guarantees.

12. Except for a small number of people, the protestors and demonstrators were not violent or disruptive.

13. Most officers conducted themselves admirably, professionally, and with considerable restraint and discipline, even when they were subjected to acts of violence and other indignities. However, instances of police misconduct were observed.

14. Some demonstrators were profiled, unlawfully searched, detained, and/or arrested.
RECOMMENDATIONS

1. The MPD should play a lead role in convincing all South Florida agencies to abide by the tenets of an Incident Command System, whereby all agencies and jurisdictions are coordinated in their planning and operations, acting under and committed to a common set of priorities, objectives, and strategies, and unified under a single command.

2. With Miami as the planning, requesting, and host agency with primary jurisdiction, a single command position should rest with its police chief. Support relationships and internal command structures for the individual agencies would remain intact, operating under, complementing, and sustaining the approved operational plan as agreed upon by each agency in the pre-event planning stage.

3. The command structure must be in writing, transparent, and articulated in advance to all involved parties, accompanied by written commitments from all participating agencies.

4. The MPD should continue to employ a joint system of intercommunications between and amongst visiting jurisdictions and, where necessary, correct any deficiencies to ensure an accurate and current flow of information.

5. The mutual aid agreements should clearly designate a communication system for command transmissions, and all visiting jurisdictions must be familiar with the command mechanism.

6. The MPD should employ a joint information system to facilitate the formatting and delivery of unified messages to the public, demonstrators, by-standers, media, and commanders in the field.

7. In events such as the FTAA where months of planning were involved, the home jurisdiction, as a matter of course, should participate in the planning, coordination, or negotiation of conditions for events with community leaders and civic or labor organizations, for the time period during which such events are to take place within the City.

8. All agreements and policies must be communicated to each of the visiting agencies. Communicating these agreements limits misunderstandings and assures the public of the right to freedom of expression while engaging in lawful activities, so that persons wishing to attend permitted peaceful events are provided protection to do so.

9. The MPD Rules of Engagement or use of force continuum should continue to be the standard employed by all assisting agencies for events occurring within the boundaries and jurisdiction of the City of Miami.

10. A committee or arbitration system should be established and in place post-event to resolve disputes not addressed or capable of being addressed during the event. These issues may involve violations of established and agreed upon operating procedures, misconduct allegations, and costs and liability issues.
11. MPD should conduct affirmative training for its officers on the protection of First Amendment rights. It was evident that MPD was not adequately prepared to handle the intermingling of peaceful demonstrators with violent protestors. Police officers should be facilitators of First Amendment rights and only take enforcement action when there is a violation of the law. Dialogue is encouraged between law enforcement and organizations concerned with the preservation of First Amendment rights.

12. MPD should have a negotiator available to be utilized in areas where un-permitted assemblies and marches are taking place. The negotiator would facilitate the flow of information, engage in discussions with the un-permitted groups, and provide clear guidance and explanations.

13. MPD should have employed the extraction teams more frequently rather than less lethal weapons and munitions.

14. MPD should inform and reassure protestors, before and during an event, that police officers will respect their right to free speech and protest, so long as the demonstrations are conducted peacefully and through the proper avenues.

15. All uniformed police officers should display their agency name, name tag, and/or identification number at all times. Most MPD personnel were readily identifiable, an example for other agencies as to minimum identification requirements.

16. MPD should reinforce Departmental Order 11.6.13.3 regarding courtesy. “Even in the face of great provocation, they should be diplomatic in the performance of their duties; and they shall serve the City in the discharge of their duties by controlling their tempers and exercising the utmost patience and discretion.”

17. MPD should reinforce Departmental Order 8.4.2.2 regarding prisoners' personal property. “Personal property taken from prisoners will be checked in at the Booking Desk at the Miami-Dade County jail.”

18. All dispersal orders should be audible, in all applicable languages, and followed by adequate time to disperse along with the communication of a viable dispersal route. MPD should research and purchase other sound amplifying equipment to communicate dispersal orders. Additionally, any future operations of this type should involve planning, training, and clear guidance to all participating agencies regarding the issuance of dispersal orders.

19. MPD should provide training to all officers on alternatives to arrest for minor infractions. When determining the “least restrictive means” of government action, the department should re-examine the arrest policy to determine whether ticketing is sufficient to accomplish crowd control. Orders to disperse, when disobeyed, give officers the preferred option to ticket the non-compliant citizens rather than arrest them.
20. Testing designed to determine whether content was effectively communicated should be part of all training, just as personnel are required to demonstrate a mastery of physical skills.

21. Course content should include the substance and application of the First and Fourth Amendments.

22. Constitutional law professors from the many law schools easily accessible to South Florida should be included among the credentialed experts enlisted to design training material for police personnel. Training should be ongoing, and the experts enlisted to develop training curricula should be selected from the local academic legal community.

23. More time needs to be devoted to training in constitutional protections and substantive legal issues.

24. Change SOP 25 Section 1-B to include constitutionally sufficient language to ensure that the use of less lethal weapons is permissible when the officer “reasonably believes” that imminent harm threatens the officer or other persons, including the subject.

   • Language should include guidance to the officer as to when, in relation to the time of the offense, less lethal weapons are used.
   • Language should be added to distinguish between passive and aggressive classes of demonstrators.
   • Language should be added to distinguish between groups and individuals.
SUBCOMMITTEE REPORTS
The Inter/Intra Agency Subcommittee, composed of Subcommittee Chairperson Rudy de la Guardia, Panel Members Jaime Perez (resigned), Otis Davis, Tanya Brinkley, and Timothy Moore, was created to review the mutual aid agreements entered into between the MPD and other law enforcement agencies pursuant to the Florida Mutual Aid Act, §§ 23.12—23.127, Fla. Stat. (2003), the command and supervisory structure associated therewith, and the effectiveness of inter-agency communications concomitant to multi-agency operations.

The Florida Mutual Aid Act authorizes state and local law enforcement agencies to enter into voluntary written agreements with other law enforcement agencies (including federal agencies) for the provision of personnel, resources, or equipment to address natural or manmade disasters or emergencies and other major law enforcement problems, including the threat of a civil disturbance. The Act expressly requires the written instrument setting forth the mutual aid agreement to:

specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and authorizing assistance, the agency or entity that has command and supervisory responsibility, a time limit for the agreement, the amount of any compensation or reimbursement to the assisting agency or entity, and any other terms and conditions necessary to give it effect.


The Mutual Aid Act also provides for immunity to law enforcement officers, law enforcement agencies, and political subdivisions that lend assistance pursuant to a mutual aid agreement. Indeed, many of the mutual aid agreements with the MPD contained language providing that each party assumes responsibility “for the acts, omissions or conduct of such party's own employees while engaged in rendering aid.”1 Another common theme in the various mutual aid agreements included a conflict provision stating that each officer was required to act in accordance with his/her department's orders, rules, and procedures, and where such matters conflict with a direct order from an MPD superior officer, such officer is to comply with the operational orders and rules of his/her own agency.

The Subcommittee held numerous meetings, reviewed and discussed multiple volumes of police After Action Reports prepared by the MPD and other assisting law enforcement agencies, communicated with the Miami-Dade Police Department and the City of Hialeah Police Department, sought input from the AFL-CIO and other organized groups that participated in the FTAA protests, and, most importantly, assembled and scrutinized the scope and limitations on the mutual aid agreements entered into by the MPD and its assisting law enforcement agencies. In addition, the

1 See mutual aid agreements with City of Aventura, Collier County, Coral Gables, Ft. Lauderdale, and City of Miami Beach.
Subcommittee requested a meeting with representatives from the MPD, the Miami-Dade Police Department, and the City of Hialeah Police Department to discuss what lessons were learned, and to make recommendations for improving multi-agency event planning and implementation. This request was not granted by the agencies, however.

Mr. Thomas Guilfoyle, Miami-Dade’s legal counsel, responded in writing to the Subcommittee. Mr. Guilfoyle maintained that the Miami-Dade Police Department did not enter into a mutual aid agreement with the MPD because, in his view, such an agreement was not necessary since the Miami-Dade Police Department has county-wide jurisdiction that includes the municipal boundaries of the City of Miami. Moreover, Louis Battle, a Major with the Miami-Dade Police Department, has testified that the Miami-Dade Police Department prepared its own operational plan and training program for its officers for the FTAA, exercised command and control over its officers, and responded to requests for assistance from the MPD.

In a telephone conference with the Subcommittee Chairperson, Captain Mark Overton of the Hialeah Police Department recommended that for future multi-agency law enforcement undertakings, the MPD should implement an Incident Command System that would more effectively control personnel, resources, and communications.

An Incident Command System is an on-scene management concept whereby an integrated organizational command structure is set in place to facilitate a quick response by personnel from various law enforcement agencies to emerging events. The Joint Law Enforcement Command Center (JLOC) was established by the MPD and its assisting agencies in an attempt to operate under an Incident Command System. The JLOC, housed at the MPD headquarters, consisted of a command team and decision-making representatives from the assisting agencies.

Additionally, the Subcommittee requested from the MPD any and all written agreements (aside from mutual aid agreements) and the substance of any oral agreements the MPD had entered into with other law enforcement agencies with respect to providing security during the FTAA. In response, the Subcommittee eventually received copies of letters the MPD had sent to other agencies. The letters revealed that the MPD requested general and specific resources from assisting agencies. Listed among the requests were Field Force, Marine, Aviation, Mounted Patrol, SWAT and Intelligence officers, Chemical-Biological Response Teams, vehicles, and drivers, as well as helicopters and pilots. Training assistance was requested and received from the Department of Homeland Security. A letter from the MPD to the Department of Homeland Security dated September 2, 2003, stated that “up to 100,000 demonstrators are anticipated.” In another letter dated November 13, 2003, and addressed to the Office of Domestic Preparedness/Department of Homeland Security, the MPD indicated that the “FTAA event is expected to draw large demonstrators and protesters, similar to those seen with the World Bank and World Trade Organization (WTO) meetings in Washington, D.C., and Seattle, Washington.” In this letter, the MPD requested the temporary transfer of a Prepositioned Equipment Program (PED) Pod from St. Petersburg, Florida to Miami-Dade County in order “to enhance the capacity of state and local law enforcement jurisdictions to respond to acts of domestic terror.” (This equipment is specifically tailored by the Federal Government to sustain and reconstitute the capabilities of local and state first responders to react to a terrorist attack or other major emergency).
FINDINGS & RECOMMENDATIONS

After receiving the numerous mutual aid agreements between the City of Miami and assisting agencies, this Subcommittee concurs that these agreements are in accordance with the state statutory requirements. However, in the absence of the FTAA Operational Plan and any information or documentation detailing other legal or collateral agreements that may exist, the Subcommittee finds the mutual aid agreements to be of no value in aiding a determination as to what information or instruction was disseminated to the assisting agencies. This Subcommittee can therefore only make recommendations as to what should be included in mutual aid agreements or operational plans for joint agency endeavors within the City of Miami.

1. Command Structure:
   a. Consistent with a unified Incident Command System, all involved agencies and jurisdictions should be coordinated in their planning and operations, acting under and committed to a common set of priorities, objectives and strategies.

   b. In multi-agency events there should be a clear command structure for all participating law enforcement agencies to follow, providing specificity as to the extent and nature of each agency’s authority and control for accomplishing designated tasks and operations. For an operation such as the FTAA demonstrations with its multi-agency involvement, the need arises for a superior commander position to be established. With Miami as the planning, requesting, and host agency with primary jurisdiction, that position should rest with its police chief. Support relationships and internal command structures for the individual agencies would remain intact, operating under, complementing and sustaining the approved Operational Plan as agreed upon by each agency in the pre-event planning stage.

   c. The command structure must be in writing, transparent, and articulated in advance to all involved parties.

2. (A) Inter-Agency Communications:

   In multi-agency events, the communications aspect of any such action is paramount to the success of the policing endeavors. The MPD After Action Report, Section VII Communications, observes that a major flaw in the 1999 World Trade Organization protests was a breakdown in communications between the participating agencies, stemming from different radio communications systems and radio frequencies. The MPD reported that in an effort to avoid such an occurrence, confidential radio codes were exchanged, officers were taught new formations and a new language, systems were integrated to “talk” to one another, and several contingency plans were developed to address foreseeable problems. The MPD’s recommendation that “dispatchers be taught this new terminology prior to similar future events” lends some credence to reports of oversights and failures in communication and communication systems in spite of the planning.

   A major incident indicating a failure of JLOC occurred on November 18, 2003, when a Miami-Dade Police Department aircraft created a safety hazard by attempting an unauthorized flight into the
FTAA security zone. The MDPD aircraft reportedly flew directly above the protestors and ignored repeated requests by the FTAA Air Operations Center to depart the airspace.

Another failure of JLOC is suggested by the arrests of individuals who dispersed as ordered by advancing police officers but were subsequently arrested by another agency for failure to disperse. For example, Mr. Jeremy Glazer, a Miami-Dade high school teacher, testified before the CIP that he attended the AFL-CIO rally at the Bayfront Park Amphitheater on Thursday, November 20th. Toward the end of the speeches, Mr. Glazer became aware of a disturbance taking place on Biscayne Boulevard. He saw a small box burning on Biscayne Boulevard, and the area was being cleared of people by the police. Mr. Glazer and others were initially prevented from leaving. Thirty to 45 minutes later, Mr. Glazer and others were allowed to leave the park. He and a group of 12 to 15 people were directed by MPD officers to proceed to the west side of Biscayne Boulevard and then walk north. They proceeded to Northeast 3rd Street, went west to Second Avenue, and proceeded north. At Northeast 6th Street, they were directed by Miami-Dade police officers to continue to proceed west along a railroad track. Mr. Glazer and the crowd obeyed, but as they were going in the direction in which they were ordered, they were stopped and ordered to return in the opposite direction by Broward Sheriff’s officers. Reversing their direction as ordered, the group returned to the area of the Miami-Dade officers, who refused to let them pass. They were ordered by the Miami-Dade officers to go back in the opposite direction, even though some members of the group explained their encounter with the Broward Sheriff’s officers. At this point, according to Mr. Glazer, Broward Sheriff’s officers were advancing upon them. Mr. Glazer witnessed several people in the group being arrested and handcuffed with plastic restraints.

Mr. Glazer’s experience is not dissimilar from the allegations set forth in various lawsuits filed by citizens complaining that they were subjected to excessive force and illegal arrests after complying with an MPD dispersal order. See, e.g., Bentley Killmon, et al., v. City of Miami, etc., et al., Case No. 04-Civ-20707- Altonaga (So. Dist. Fla.); and Lorne Battiste, et al. v. Broward Sheriff’s Kenneth C. Jenne, etc., et al.

**RECOMMENDATIONS**

The following measures are therefore recommended by the Subcommittee:

a. That the MPD continue to employ a joint system of intercommunications between and amongst visiting jurisdictions and, where necessary, correct any deficiencies to ensure an accurate and current flow of information.

b. The mutual aid agreements should clearly designate a communication system for command transmissions, and all visiting jurisdictions must be familiar with the command mechanism, i.e., Incident Command System (ICS) which is used by FEMA.

c. Employ a joint information system to facilitate the format and delivery of unified messages to the public, demonstrators, by-standers and the media.

2. (B) Communication of Agreements and Policies to Visiting Agencies:
a. In events such as the FTAA where months of planning were involved, the home jurisdiction as a matter of course should plan, coordinate or negotiate conditions for events with community leaders and civic or labor organizations.

b. These agreements must be communicated to all the visiting agencies. Communicating these agreements limits misunderstandings and assures the public of the right to freedom of expression while engaging in lawful activities, so that persons wishing to attend permitted peaceful events are provided protection to do so.

2. (C) Communication of Dispersal Orders to Protestors:

a. The CIP heard testimony from eyewitnesses that orders to disperse were not heard, and/or that insufficient time was provided for dispersal. The MPD must establish written, clear, and uniform procedures for communicating with protestors and ensure that transmission of the procedures and any orders given are clearly articulated and received by the public in all applicable languages.

b. MPD should explore the use of high tech equipment capable of delivering an amplified message to an area wide enough to reach the target audience.

3. Rules of Engagement and Equipment

The MPD After Action Report described the Rules of Engagement as “strict, self-imposed guidelines on when all use of force was appropriate.”2 The Rules were reportedly presented to all participating agencies. The MPD After Action Report further indicated, “[The] Miami Police Department and our partners were repeatedly instructed that they were not to respond to verbal provocation…force was to be used only in response to force and at the direction of a ranking supervisor.”3 It appears, therefore, that the Rules of Engagement were expected to define and delineate rules and standards to which all agencies would adhere.

To address the allegations of unnecessary and/or improper use of less lethal weapons, tear gas, tanks, and intimidating full body armor, one must look first to the efficacy of the Rules of Engagement and whether they clearly defined and delineated the parameters. To be successful, the following should be clearly identified and explained:

a. The standard or level of force to be used. Visiting agencies are expected to adopt for the course of the event a standard consistent with that of the City of Miami.

b. When to use weapons / less lethal weapons and which weapons or less lethal weapons may be used within City of Miami limits.

c. Uniform requirements: It is essential, especially in incidents where use of force is

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3 Id. at pp 10-11
likely and involving personnel from more than one agency, that all officers maintain clearly identifiable markings on their uniforms and equipment. Use of riot gear/full body armors should be incident specific and consistent with predetermined limitations and guidelines for use.

d. The MPD should inform assisting agencies what gear/uniforms are appropriate for use during the event.

e. The MPD shall clearly delineate its policies on arrest procedures and prisoner processing and establish a standard of treatment for arrestees in order to assure them of due process protections.

f. The MPD should coordinate rules for intake of arrestees with Miami-Dade County.

4. Training

At the public hearings and CIP meetings, the MPD stated that MPD officers were trained in the use of force continuum, outlining when to use force, the appropriate level of force, appropriate weaponry, and related matters.

a. Training curriculum should be coordinated with all assisting agencies with standard training and materials provided to all trainees from the various agencies.

b. Where the event occurs within the boundaries and jurisdiction of the City of Miami, the MPD Rules of Engagement or use of force continuum should continue to be the standard employed by all assisting agencies.

5. Dispute Resolutions

A committee or arbitration system should be established and in place post-event to resolve disputes not addressed or capable of being addressed during the event. These issues may involve violations of established and agreed upon operating procedures, misconduct allegations, and costs and liability issues.
The Complaints Subcommittee was headed by CIP Vice-chairperson Janet McAliley and consisted of Panel Members Thomas Rebull, Otis Davis, and Tanya Brinkley. The Subcommittee investigated and reached findings and recommendations on the complaints filed with the CIP arising out of the FTAA protests to determine not only the merits of each complaint, but also to ascertain whether the complaints were indicative of any underlying policy issues requiring ameliorative changes in the MPD protocols and practices with respect to the MPD.

Each complaint was assigned to a CIP private investigator for investigation and recommendations to the CIP’s investigative staff. Where possible, complainants appeared before the Subcommittee. In turn, the Subcommittee reached findings and made recommendations to the full Panel. Each complaint has been adjudicated as “No Finding” and closed by the Panel. An adjudication of “No Finding” is required under the CIP Ordinance in cases where “the complainant failed to produce information to further the investigation, another agency is responsible, the complainant withdrew the complaint, the complainant is unavailable to clarify the complaint, the officer is no longer employed by the Miami Police Department, or the Panel did not reach a conclusion.” See City of Miami Ordinance No. 12188. The complaints investigated and findings are set forth below.

Additionally, CIP staff reviewed all civil litigation surrounding the FTAA (Appendix 2). It should be noted that only one complainant, Celeste Fraser Delgado, filed a complaint with the CIP. Ms. Delgado, did not, however, make herself available to the CIP investigator or to the CIP.

**COMPLAINTS INVESTIGATED**

**Case:** AFL-CIO CIP 03-025  
**Allegations:** Abusive Treatment, Improper Procedure, and Violation of Constitutional Rights. Mr. Richard Trumka, an AFL-CIO official, filed a complaint on behalf of the AFL-CIO alleging that the MPD broke a number of agreements made between the AFL-CIO and the MPD regarding a parade and rally by the AFL-CIO that was set for Thursday November 20, 2003. He claimed that there were numerous instances of obstruction, intimidation, harassment and violence at the hands of the MPD, specifically: buses carrying AFL-CIO members were prevented access to the Bayfront Park Amphitheater by the MPD; the MPD denied access to media, despite an agreement that was made on November 18; access was denied to the entire march route; mismanagement by the MPD led to communications and control breakdowns; the MPD promised that all officers on the street would have clearly identifiable uniforms and would not be dressed in riot gear; unprovoked and excessive force was used against demonstrators in the amphitheater. In addition, during an interview with a CIP investigator, Mr. Trumka stated that his hotel room was broken into and someone went through his briefcase, laptop, and cell phone, and that he was frisked before entering Bayside Marketplace.

**Findings:** The case was closed as No Finding for Abusive Treatment, No Finding for Improper Procedure, and No Finding for Violation of Constitutional Rights. Mr. Trumka acknowledged to a CIP investigator that the AFL-CIO’s demonstration and march were held. He feels, however, that most of the parade participants were turned away and the march was truncated. Mr. Trumka could not identify any of the officers or departments involved in the frisking incident. There is no
indication that a police officer was involved in the hotel room incident, and Mr. Trumka stated that he never reported the incident to the police. Mr. Trumka stated that his main complaint is directed towards the MPD because, in his view, the MPD was in charge of the overall organization of the event.

**Case:** Michael Borucke  CIP 04-017
**Allegations:** Abusive Treatment. Mr. Borucke stated that on November 20, 2003, police fired tear gas, paintballs, bean bags, and rubber bullets into the crowd on Biscayne Boulevard across from the Bayfront Park Amphitheater.
**Findings:** The case was closed as No Finding. A CIP investigator contacted Mr. Borucke, who stated that he believed that the officers who fired at and struck him were from the Broward Sheriff's Office. No evidence showed that any MPD officers were involved in the incident.

**Case:** Barbara Buck  CIP 03-008
**Allegations:** Abusive Treatment. Ms. Buck stated that while she was attending a rally on November 20, 2003, she witnessed police using tear gas and arresting people for no reason.
**Findings:** The case was closed as No Finding. A CIP investigator contacted Ms. Buck, who stated that she was unable to identify which police departments or officers were involved. Photographs provided by Ms. Buck clearly showed that the involved officers were not employed by the MPD; they did not have any MPD insignias, markings or patches that were worn by those officers identified as MPD officers. CIP staff was unable to identify which agencies were involved.

**Case:** Bruce Clapp  CIP 03-005
**Allegation:** Discourtesy. Mr. Clapp stated that while he was at the Overtown Metrorail station during the FTAA protests (no date, time or exact location provided), he was intimidated by police officers dressed in riot gear and that they cursed at him.
**Findings:** The case was closed as No Finding. Mr. Clapp could not identify the police department or the officers involved. Based on the location of the incident, the incident did not involve any MPD officers. A CIP investigator was unable to locate Mr. Clapp after traveling to his residence and was unable to contact Mr. Clapp via the telephone.

**Case:** Matthew Cleinman  CIP 04-016
**Allegations:** Abusive Treatment. Mr. Cleinman stated that on November 20, 2003, he witnessed police officers discharging less lethal weapons into a crowd and falsely arresting people.
**Findings:** The case was closed as No Finding. A CIP investigator contacted Mr. Cleinman, who stated that he did not have a very good recollection of the details of the incidents and did not know which police departments were involved. He complained to the CIP because he believed that the MPD was in charge of the various police departments.

**Case:** Noel Cleland  CIP 03-009
**Allegations:** Abusive Treatment. Mr. Cleland stated that his daughter, Sarah, was shot in the back of the leg with a rubber bullet while attending the FTAA protests on November 20, 2003, on Biscayne Boulevard.
**Findings:** The case was closed as No Finding. Mr. Cleland was unable to identify the officers involved. While Sara Cleland's leg was injured by what appears to be a "rubber bullet," it is unclear what officer or what police agency discharged the round. During a CIP Complaints Subcommittee meeting on November 9, 2005, Mr. Cleland stated that his complaint is not with the officer who was
doing the shooting, but with the chain of command that gave the order to shoot at a peaceful crowd. He stated that this was a coordinated effort, and his complaint is with the person who gave the order.

Case: Ryan Conrad  CIP 03-101
Allegations: Abusive Treatment and False Arrest. Mr. Conrad stated that he was beaten over the head with a baton while video taping at the FTAA protests on November 20, 2003. Mr. Conrad stated that a second officer attempted to smash his camera with a baton and that he was arrested for no reason while walking home from the protest.
Findings: The case was closed as No Finding for Abusive Treatment and No Finding for False Arrest. A review of the arrest report revealed that Mr. Conrad was arrested by Officer Hill with the Miami-Dade Police Department. The CIP forwarded Mr. Conrad's complaint to the Miami-Dade County Independent Review Panel and the Miami-Dade Police Department's Professional Compliance Bureau. Additionally, a CIP investigator contacted Mr. Conrad, who stated that he would not provide an interview until he spoke to his attorney. Mr. Conrad has not contacted the CIP investigator or the Miami-Dade Police Department's Professional Compliance Bureau.

Case: Al Crespo  CIP 03-007
Allegations: Abusive Treatment, Improper Procedure, and Violation of Freedom of Speech and Assembly. Mr. Crespo provided the CIP with a journal chronicling his observations during the FTAA protests from November 16, 2003 through November 21, 2003.
Findings: The case was closed as No Finding for Abusive Treatment, No Finding for Improper Procedure, and No Finding for Violation of Freedom of Speech and Assembly. Mr. Crespo's complaints were of a general nature in that he did not make any specific complaints involving the MPD. (He did not indicate that he was a victim in any of the allegations) Mr. Crespo appeared before the CIP on January 17, 2006, to provide testimony and recommendations.

Case: John Matthew Davis  CIP 04-094
Allegations: Excessive Force. Mr. Davis stated that on November 20, 2003, police unleashed a barrage of less lethal weapons into a crowd without warning or any audible order to disperse. Mr. Davis stated that he witnessed numerous people get shot with less lethal rounds, and that he was also shot.
Findings: The case was closed as No Finding. A CIP investigator and the CIP’s Independent Counsel spoke to Mr. Davis in separate conversations. Mr. Davis could not identify the law enforcement agency involved. The CIP’s Chief Investigator reviewed photographs and a video on Mr. Davis' website. The photographs show unknown police officers from other law enforcement agencies, but none from the MPD (based upon lack of identifying insignias worn by MPD personnel).

Case: Celeste F. Delgado  CIP 04-019
Allegations: Abusive Treatment and False Arrest. Ms. Delgado stated that during the protests on November 20 and November 21, 2003, she was prohibited from walking south from Northeast 12th Street and that on Northeast 1st Street police officers told her to turn around. She also claims that she was struck in the shoulder with a police shield and was arrested without cause.
Findings: The case was closed as No Finding for Abusive Treatment and No Finding for False Arrest. The CIP’s Independent Counsel spoke with Ms. Delgado, who stated that the officers involved were not employed by the MPD, but were Miami-Dade police officers. She has filed a
lawsuit against Miami-Dade County and its police officers for violating her First, Fourth, and Fourteenth Amendment Rights.

**Case:** Jamie Loughner  **CIP 03-003**  
**Allegations:** Abusive Treatment and False Arrest. Ms. Loughner claims that on November 20, 2003, she was illegally detained and arrested, denied medical treatment by a medic of her own choosing, threatened, deprived of her constitutional rights to protest, and that law enforcement officers stole a sign or placard she was carrying.  
**Findings:** The case was closed as No Finding for Abusive Treatment and No Finding for False Arrest. Ms. Loughner has been unavailable to the CIP. Numerous attempts were made to contact her via e-mail, telephone, and regular mail.

**Case:** Keith McCormish  **CIP 03-006**  
**Allegations:** Abusive Treatment. During the FTAA protests on November 20, 2003, Mr. McCormish claimed that police officers discharged non-lethal weapons into parade participants on November 20, 2003, and that one of the projectiles struck him on his ankle.  
**Findings:** The case was closed as No Finding. A CIP investigator contacted Mr. McCormish, who was unable to provide any additional information. Mr. McCormish stated that he had photos of the encounter with law enforcement but has not provided them to the CIP investigator or the CIP despite requests to do so.

**Case:** Miami Chapter of Amnesty International USA  **CIP 04-020**  
**Allegations:** Violation of Freedom of Speech and Assembly. Amnesty International alleged that police deployment unnecessarily interfered with and substantially impaired its permitted demonstration at the Torch of Friendship, including access to the public and the press.  
**Findings:** The case was closed as No Finding. The actions complained of were not committed by Miami police officers. The Miami Chapter of Amnesty International USA obtained City of Miami Police Department Special Events Permit No. 00626 to stage a demonstration on November 20, 2003, from 10:00 a.m. to 2:00 p.m. at the Torch of Friendship during the FTAA Summit. The Torch of Friendship, located within Bayfront Park between Northeast 3rd and 4th Streets and facing Biscayne Boulevard, is approximately one-half mile north of the Intercontinental Hotel, the FTAA meeting site. Steve Wetstein and other Amnesty International members assembled at the Torch of Friendship on the morning of November 20, 2003, to set up sound equipment and literature tables in preparation for their demonstration. According to Mr. Wetstein, several Hialeah police officers came to the demonstration and told Amnesty International that it had to move from the central to the southern part of the Torch of Friendship because “50 anarchists” were coming toward the Torch of Friendship. Mr. Wetstein protested to Captain Mark Overton, the Hialeah officer in charge, that his group had a permit to assemble, but Captain Overton nonetheless insisted that the assemblage move. Amnesty International complied.

The CIP’s Independent Counsel talked with Captain Overton about this complaint. Captain Overton advised that on the night of November 19th, law enforcement had received intelligence that violent protestors intended to attack the police security fence encircling the Intercontinental Hotel on November 20. In response to this information, several contingency plans were developed which included how and where police skirmish lines would be deployed. Captain Overton emphatically rejects any notion of a plan by police to obstruct or otherwise frustrate any permitted demonstration. The next morning, November 20th, Captain Overton positioned his officers at the
Torch of Friendship after receiving notice that City police officers were engaged with violent protestors at the security fence and that many of the protestors were indeed coming north on Biscayne Boulevard toward the Torch of Friendship. Captain Overton also noted that he was concerned about the safety of the small group of people assembled at the Torch of Friendship and, therefore, instructed them to move. Captain Overton further advised that Hialeah police officers were not under the command of Miami police officers.

Case: The Reverend Dr. Lucy Hitchcock Seck  CIP 04-018
Allegations: Abusive Treatment. The Reverend Dr. Seck stated that on November 18 and November 20, 2003, police officers denied access to interfaith services at the First United Methodist Church despite having obtained permits from the MPD. She further stated that the officers blocked Biscayne Boulevard, stood near the church door, and intimidated people who were coming into the service.
Findings: The case was closed as No Finding. The CIP investigator contacted Dr. Seck, who stated that the involved officers were Miami-Dade police officers. Dr. Seck appeared before the CIP on January 19, 2006, to provide testimony and recommendations.

Case: Marilyn Sewell  CIP 03-031
Allegations: Improper Procedure. Ms. Sewell stated that on November 20, 2003, police officers barricaded the streets and closed the Metro rail lines, making it difficult to get to downtown Miami; changed a parade march route at the last minute; and were attacking people and using tear gas for no reason.
Findings: The case was closed as No Finding. Ms. Sewell was unavailable to the CIP. A CIP investigator spoke with Ms. Sewell, who stated that she would contact the investigator upon her return from a business trip. Ms. Sewell has failed to do so, and has not responded to additional messages left by the CIP investigator.

Case: Jim Steitz  CIP 03-004
Allegations: Violation of Equal Protection. Mr. Steitz stated that on November 20, 2003, an unknown police officer approached him and ordered him to cross the street while other people in the area were not similarly ordered to move away.
Findings: The case was closed as No Finding. A CIP investigator contacted Mr. Steitz, who provided the name of a witness. The CIP investigator contacted the witness, who reportedly had no knowledge of the events that were described by Mr. Steitz.

Case: Jim Steitz  CIP 03-011
Allegations: Discourtesy. Mr. Steitz stated that on November 20, 2003, Chief Timoney and another officer approached him, asked him if he wanted to get arrested, and told him to “get out of here.”
Findings: The case was closed as No Finding. A CIP investigator contacted Mr. Steitz, who provided the name of a witness. The CIP investigator contacted the witness, who reportedly had no knowledge of the events that were described by Mr. Steitz.
Case: Jim Steitz  CIP 03-012  
Allegations: Improper Procedure and Excessive Force. Mr. Steitz stated that on November 21, 2003, several dozen people were at the northeast corner of the Miami-Dade County jail and courthouse complex when police officers dressed in riot gear gave a dispersal order but did not give them ample time to disperse before advancing into the crowd. He further alleged that he was struck with a police shield, injuring his elbow and wrist.  
Findings: The case was closed as No Finding for Improper Procedure and No Finding for Excessive Force. A CIP investigator contacted Mr. Steitz, who provided the name of a witness. The CIP investigator contacted the witness, who reportedly had no knowledge of the events that were described by Mr. Steitz.

Case: Jason Tockman CIP 04-015  
Allegations: Abusive Treatment. Mr. Tockman claimed that on November 20, 2003, he witnessed police officers using excessive force including shooting rubber bullets, pepper spray, and tear gas into non-violent crowds. Mr. Tockman stated that he was hit by a rubber bullet.  
Findings: The case was closed as No Finding. Mr. Tockman was unavailable to the CIP. Numerous attempts were made to contact Mr. Tockman via e-mail, telephone, and regular mail.

Case: Terrance Rothman CIP 06-154  
Allegations: False Arrest. Mr. Rothman claimed that on October 16, 2003, he was falsely arrested for threatening a public servant as a result of his views concerning the FTAA. As a result of this arrest, he was prohibited from entering City Hall.  
Findings: The case was closed as No Finding. Mr. Rothman was arrested for threats on a public servant and telephone threats. Mr. Rothman, who is homeless, was unavailable to the CIP.

OVERALL FINDINGS

1. In certain instances, the MPD did not adequately protect the First Amendment rights of demonstrators. Additionally, the overwhelming presence of police dressed in riot gear intimidated demonstrators and deterred them from exercising their First Amendment rights.

Complaints from Amnesty International, the AFL-CIO, the Unitarian Universalist Congregation of Miami, and other individuals, alleged deliberate attempts by the MPD and assisting agencies to impede or deny their participation in peaceful and permitted marches and/or planned meetings, interaction with their membership, and contact with the public or the press. This was allegedly done by blocking access to staging areas or routes and arresting and/or using force on non-violent protesters who were exercising their First Amendment rights. The presence of officers in body armor was also viewed by complainants as intimidating. Additionally, the CIP heard testimony from organizations that stated that their members were intimidated by the media coverage before the FTAA resulting in low turnouts during the events.

In response to these allegations, the MPD stated that every effort was made to allow permitted and non-permitted gatherings to be carried out. Furthermore, the MPD conducted several meetings and planning sessions with representatives from numerous agencies, organizations, and protest groups, as well as the Community Relations Board, to discuss procedures and negotiate terms.
The MPD also advised that where confrontations with demonstrators caused or could imminently result in chaos, the police had an overriding obligation to secure the safety of innocent persons.

MPD’s permitting process was well organized and inclusive. Unfortunately this did not carry forward into the event itself. For example, several persons who obtained permits complained that MPD representatives who had been designated to assist them during the event were unavailable or otherwise unresponsive. In addition, there is no evidence that the MPD helped those who were thwarted by other law enforcement agencies from attending peaceful assemblies.

In reference to body armor, MPD concedes that officers should not “resort to such gear until there is a reliable, specific concern for officer safety. The vision of officers in body armor when the threat of violence is low can appear uninviting and, at worst, can intimidate some from exercising their rights to free expression.”

Therefore, when planning for future operations similar to the FTAA protests the MPD should reach an agreement with all involved law enforcement agencies regarding the uniform guidelines, specifically the wearing of riot gear.

2. MPD did not have an adequate contingency plan to ensure that permitted assemblies and marches would be allowed to occur.

Un-permitted protests interfered with permitted protests, and planned marches were disrupted despite months of planning and negotiations. The permit process was designed to assist MPD in accounting for and planning for the number of people who were going to protest during the FTAA. The process was also designed to accommodate organizations that expressed their desire to exercise their First Amendment rights. MPD began negotiations in August 2003. A negotiations team met with the organizations that were seeking permits, and the Community Relations Board was involved in that process to make sure that everything was being done properly, without any intimidation or any influence. The MPD stated that during the negotiations process, all parties involved were informed that plans were subject to change if the police faced violence on the day of the rallies and parades.

A number of complainants who had obtained permits from the City of Miami to assemble stated that they were prevented from reaching their meeting or rally, and some stated that they were even prevented from crossing the street. The Rev. Dr. Lucy Seck and members of the Unitarian Universalist Congregation were denied access to an interfaith service at First United Methodist Church on November 18, 2003, and an interfaith teach-in at the same location on November 20, 2003. Members of Amnesty International USA, who held a permit for an assembly at the Torch of Friendship on November 20, 2003, claimed that just prior to the start of their demonstration, 30-40 police officers told them to move because anarchists were headed toward the Torch of Friendship. Amnesty International also reports that cordons of police officers in riot gear were set up along the streets to prevent Amnesty International from having access to the public and the press. The AFL-CIO stated that a majority of their buses did not reach the Bayfront Park Amphitheater, but were diverted without prior notification or consultation.

The MPD denied these allegations and stated that people who obtained permits were afforded the same rights as everyone else, the streets were not blocked off, and there was a free flow of

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pedestrian traffic. The MPD stated that they made every effort possible to make sure that the protestors had every opportunity to get to their venue for the demonstrations. The MPD further notes that a briefing was held each morning with all the assisting law enforcement agencies at the JLOC to inform them of what permits were issued and the anticipated size of the group participating, and to address any emergent issues.

Police Chief John Timoney stated that no one was arrested for an un-permitted demonstration or parade. He explained that the MPD could have arrested them but did not because of a concern that there would be complaints about pre-emptive arrests. According to the MPD, people were arrested for unlawful assembly only after a dispersal order was given. The MPD stated that an un-permitted march did interfere with the AFL-CIO’s permitted march on Thursday, November 20, when law enforcement officers confronted some violent protestors on Biscayne Boulevard; the officers were required to clear and secure the area for public safety reasons. For this reason, after 9:30 a.m. only five of the AFL-CIO buses were able to come onto Biscayne Boulevard.

Jack Blumenfeld from the City of Miami Community Relations Board testified before the CIP on January 17, 2006. He stated that he was involved in the permit process and attended a number of meetings with the AFL-CIO. He also stated that the AFL-CIO was the point organization for a coalition of groups. He stated that Ron Judd, the western regional director for AFL-CIO, suggested at a meeting with MPD officials on November 18, 2003 that the police build a second fence in advance of the security fence on Biscayne Boulevard in front of the Intercontinental Hotel where the FTAA Trade Ministers were located so that the crowd could tear down the security fence as a symbolic gesture. Mr. Blumenfeld mediated an agreement between the MPD and the AFL-CIO at 10:00 a.m. on Wednesday, November 19 regarding the security fence. During this meeting, the AFL-CIO reportedly stated that it would provide 1,000 trained peacekeepers, including steel workers and longshoremen, who would function as parade marshals and would be positioned in front of the security fence on the morning of November 20. Basically, the peacekeepers would surround the leadership of the AFL-CIO at the front of the march; the theory was that a crowd might advance upon the police officers stationed at the security fence but would not attack the peacekeepers. There was an impasse over the AFL-CIO putting its marshals out on Thursday morning because the AFL-CIO wanted its march to go onto Flagler Street or at least close to the security fence line in order to be seen from the Intercontinental Hotel. Ultimately everyone agreed that AFL-CIO would have a line of marshals and peacekeepers in front of the fence. However, the AFL-CIO parade marshals did not take a position in front of the security fence; as a result, the AFL-CIO march did not proceed along the planned route.

3. On occasion, indiscriminate use of force was utilized against demonstrators, resulting in less-lethal weapons being deployed against retreating subjects and bystanders.

In response to the Subcommittee’s concerns regarding allegations of excessive force including the unnecessary use of less lethal weapons, the MPD referred to the Rules of Engagement that were disseminated to all assisting agencies. The Rules of Engagement set forth the policies and guidelines authorizing the use of force.\textsuperscript{5} The MPD explained that the force continuum outlines police omnipresence and verbal commands as initial response, increasing to use of chemical

agents and mechanical tools where “physical threat or harm to property or persons is presented.” According to the MPD, the policy was to use less lethal weapons, with “emphasis on targeting...specific individuals committing violent acts rather than the crowd as a whole.” Decisions to deploy wide dispersing chemical agents, particularly tear gas, reportedly required authorization of a SWAT Lieutenant, Captain of Police, or higher ranking personnel, and were to be based on “safety, effectiveness, deliverability, authorization and accountability.”

In meetings with the Police Chief John Timoney and his staff, the CIP was advised that that less lethal weapons and munitions, including beanbags and sponge rounds, were used on protesters who were deemed to be in violation of the law, but that some persons were unintentionally struck. MPD personnel denied that munitions were indiscriminately deployed. The MPD asserted that the munitions were target-specific in their deployment and that attempts were made to utilize extraction teams to remove violators rather than deploy munitions into the crowd. It was reported, however, that officers came under attack when arrestees were grappled from them by protesters. The Subcommittee viewed video tapes capturing some of these incidents.

According to testimony received from Donald Jones, a distinguished constitutional law professor at the University of Miami, “as long as a protester is acting in a way that does not constitute imminent harm, there would be no justification for the use of serious bodily harm to that person.” Less lethal force options, in Professor Jones’ opinion, do not distinguish between those who refuse to move, those who do not realize that less lethal force is about to be deployed, and those who simply cannot find their way out of the crowd.

With respect to allegations that tear gas was used on protesters, Police Chief Timoney advised that under the Rules of Engagement and agreements between the several agencies, no gas would be used on protestors. He also noted that on November 20 a Miami Beach officer did deploy gas, but it was unauthorized.

The CIP heard testimony and received complaints from people who stated that they did not hear the dispersal orders or tried to disperse and were denied access or given conflicting information from different police agencies. Many complainants said they were not given adequate warnings regarding the use of chemical irritants and other less lethal force options. Others stated that they were shot with less lethal weapons while their backs were turned or while they offered no resistance and presented no threat. A review of the video footage from the FTAA protests revealed police officers targeting retreating subjects, and, in the case of Ms. Elizabeth Ritter,

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6 Id. at 55-56.
7 Id. at 56.
8 Id. at 56.
9 This issue was addressed in the “Report to Seattle City Council WTO Accountability Committee” by the Citizens’ Panel on WTO Operations at p.18. The Citizens’ Panel recommended that, wherever possible, the Seattle Police Department should use arrests rather than chemical irritants or other less lethal force in dealing with non-resisting, non-violent demonstrators who violate the law.
10 Elizabeth Ritter is an attorney who practices in Miami-Dade County. While participating in a demonstration on November 20, 2003, she was repeatedly fired upon with less-lethal weapons by advancing, riot-clad police officers. Based upon the video tapes reviewed and the testimony presented, there is no discernible justification for the officers to have used such force against Ms. Ritter.
inappropriately aiming and shooting where her head appeared to be as she knelt down in the street seeking cover behind a placard she was holding.

The use of extraction teams enabled MPD to deal with problematic protestors while allowing peaceful protestors to exercise their First Amendment rights. It is strongly recommended that for future events, the MPD should deploy extraction teams more frequently.

4. Leading up to and during the FTAA, MPD and the media focused on violent protestors.

An overwhelming emphasis was placed on potential violent protestors. During the days leading up to the FTAA Summit meetings, the local media outlets played footage from the WTO protests that took place in Seattle, Washington, in November 1999. Images of violent protestors and destruction of property flooded the airways. Professor Douglas McLeod stated that this type of media coverage puts the police on edge and forces them to be ready to respond. Under such circumstances, the police are held accountable if they do not respond. He went on to discuss the protest paradigm and how it related to the media coverage during the FTAA protests. According to the protest paradigm, the media pits the protestors against the police rather than focusing on the organization and/or issue that truly represents what the protestors were demonstrating against.

During the pre-event coverage about the FTAA, the media began using the word “anarchist” but never explained the underlying principles. Additionally, the media focused on the social cost of the protest, citing the traffic problems caused by the protest, the businesses that closed and boarded up in anticipation of the protests, and the extra expense to the public that occasioned an enhanced police presence. Very little media coverage was directed towards peaceful protestors or the underlying reasons for the protests.

5. Tasers were employed during the FTAA protests.

The MPD After Action Report does not specifically list the Taser as being employed during the FTAA protests. However, a comprehensive review of the After Action Reports and of the arrest forms discloses that the Taser was utilized on at least four occasions by MPD officers.

Incident #1: On November 16, 2003, Everol Moulton was involved in a fight at Bicentennial Park. Mr. Moulton was advised that he was being placed under arrest and directed to put his hands behind his back. Mr. Moulton reportedly tensed his hands and arms, and pulled away in an attempt to resist the officers. As a result, he was Tasered, then arrested for Simple Battery and Resisting without Violence.

Douglas McLeod is a professor at the University of Wisconsin-Madison School of Journalism and Mass Communication. He has conducted research on the role of mass media in social conflicts.

The protest paradigm is a set of common characteristics of protests.

Joseph Man Chan and Chi-Chuan Lee introduced the protest paradigm in their 1984 study of media coverage of protests in Hong Kong.
Incident #2: On November 20, 2003, Bike Response Platoon 2 was escorting an unauthorized march. According to the Response to Resistance report, several protestors bumped and kicked Officer Alvarez’s bike. An unknown person was Tasered. After being Tasered, the person fell to the ground but was picked up by other protestors who ran off with the person.

Incident #3: On November 20, 2003, while the bicycle patrol was escorting approximately 100 protestors, Elizabeth Ann Ferguson was asked to follow the crowd. Ms. Ferguson reportedly refused and rushed towards Officer Carr in a fighting motion. Officer Carr Tasered Ms. Ferguson and arrested her for Disobeying a Lawful Order and Resisting without Violence.

Incident #4: On November 20, 2003, Jessie Wood was throwing rocks at police officers while they were attempting to make an arrest. Mr. Woods then fled the scene to avoid being arrested and was stopped by Lt. Alvarez. Mr. Woods reportedly began to swing his arms and kick Lt. Alvarez in an attempt to escape. Officer Mercado Tasered Mr. Woods and placed him under arrest for Resisting with Violence and Aggravated Assault on a Police Officer.

CIP staff reviewed the MPD policy and training requirements for the use of Tasers. All the Taser discharges complied with MPD policies and procedures. However, the CIP made a recommendation to modify the Taser policy on June 30, 2005, because the policy appeared to be in conflict with the Use of Force Departmental Order and its accompanying Resistance Matrix. It should be noted that MPD has revised its Taser policy so that the Taser is no longer authorized to be used at the Passive Physical Resistance level.

6. Most police officers had no visible name or identification number, making it virtually impossible to identify individual officers and agencies and hold personnel accountable. This hampered the CIP’s investigation of individual complaints.

The necessity for clear identification of officers and agencies was noted by the Subcommittee as a major impediment to the investigation of complaints. Only two of the nineteen complainants were able to identify the principal officer involved in the incidents. Others were unable to identify the agency to which the officer belonged.

The MPD has indicated that the assisting agencies were not required to assure that their respective officers and equipment be clearly identified. A thorough review of video coverage plainly shows that MPD officers and their equipment were clearly delineated. The MPD acknowledges that one of the lessons learned from this experience is to require proper identification on clothing and equipment for all assisting agencies.

During a CIP Town Hall meeting on January 15, 2004, Al Crespo made allegations that MPD officers tried to scratch off their identification numbers on their uniforms. A comprehensive review of video footage does not support this allegation. There is video footage that shows police officers being strewn with paint and other substances and making attempts to clean their uniforms.
7. Some police officers were discourteous, aloof towards demonstrators, often ignoring them, providing conflicting directions, and offering little to no assistance.

Allegations of discourtesy included the use of profanities by officers as well as actions and references to complainants’ appearance and/or body odor. Several complainants stated that the officers were intimidating in their full riot gear and that the officers would not provide them with information or direction or answer their questions. MPD investigated an allegation of discourtesy involving profanity and an obscene gesture by a MPD officer. This incident occurred on November 22, 2003, in front of the Citizen Trade Campaign office located at 217 N. Miami Avenue. The incident was captured on video and clearly depicts the officer shouting a profanity and raising his middle finger, making a derogatory gesture. This officer received disciplinary action as a result of the substantiated allegation.

The CIP also heard testimony that police officers did not verbalize any instructions to demonstrators and would not provide any assistance.

8. Property and personal effects of demonstrators were not handled properly or with due care.

The MPD, in its January 2004 After Action Report, made reference to two complaints of failure to safeguard the personal property (clothing and papers) of arrestees and what appears to be a third complaint of failure to secure and resulting loss of a bicycle belonging to a disabled arrestee. Between December 2003 and March 2004, the CIP received five complaints alleging failure of police to secure the property of arrestees, intentional abandonment of arrestees’ property on public right of ways, and damage to property (vehicle and a video camera). The complainants were unable to identify the alleged officers. A review of video footage clearly shows police officers from BSO, MDPD, and MPD mishandling the property of protestors to include emptying contents of backpacks on the ground and failing to inventory and transport property of arrestees. MPD’s training for Mass Arrest Processing prior to the FTAA protests does not adequately address the handling of personal property.

9. Some demonstrators were profiled, unlawfully searched, detained, and arrested.

There were general and some specific allegations that the MPD appeared to have planned for and treated protesters as anarchists or individuals prepared to engage in violent criminal acts. Complaints alleged profiling and surveillance of protesters as well as pre-emptive mass arrests where law enforcement officers arrested and/or ordered peaceful protesters to disperse because of perceived affiliation with “anarchists” or unlawful protesters. There were also allegations that non-protesters were allowed to remain in areas and on roadways while peaceful protesters were ordered to leave the area or be arrested.

The MPD outlined efforts to receive intelligence and use of confidential surveillance grids to monitor developing threats during demonstrations and marches. Extraction teams of plain-clothed officers were reportedly used to safely and swiftly separate violent actors from non-violent individuals. The MPD alleged that some peaceful protesters and groups, although not actively interfering in police operations, were used to “shelter” those engaged in such unlawful acts. The MPD further contends that ample warning was given prior to arrests or deployment of less lethal
weapons where confrontations with police occurred. According to the MPD, self-proclaimed peaceful protesters were afforded opportunities to separate themselves from violent participants. Those who remained, according to the MPD, were disobeying a lawful order and contributing to the violence.

CIP staff examined video footage showing the detention and arrest of several people, including obvious senior citizens. Two gentlemen wore vests indicating that they were marshals with the AFL-CIO. They were made to lie down adjacent to the railroad tracks and flex cuffed behind their backs. It did not appear that they were engaged in unlawful activity, and alternatives to arrest were available.

10. An overwhelming majority of the arrests made during the FTAA protests did not result in prosecution or findings of guilt.

Complaints received by the CIP included approximately seven direct or indirect references to incidents of false arrests. Three CIP complainants were arrested: Jamie Loughner, Ryan Conrad, and Celeste Fraser Delgado. Staff, on behalf of the Complaints Subcommittee, has reviewed FTAA protest-related arrest affidavits. According to the MPD’s After Action Report, 227 arrests were made during the FTAA protests by Broward Sheriff’s Officers, the Florida Highway Patrol, the Ft. Lauderdale Police Department, the Hialeah Police Department, the MPD, the Miami-Dade Police Department, and the Pinecrest Police Department. The CIP was unable to determine the arresting agency for one of the arrests.

<table>
<thead>
<tr>
<th>Arrests by Agency</th>
<th>Number of Arrests</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSO</td>
<td>20</td>
</tr>
<tr>
<td>FHP</td>
<td>2</td>
</tr>
<tr>
<td>Ft. Lauderdale</td>
<td>1</td>
</tr>
<tr>
<td>MPD</td>
<td>126</td>
</tr>
<tr>
<td>MDPD</td>
<td>75</td>
</tr>
<tr>
<td>Pinecrest</td>
<td>1</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>227</strong></td>
</tr>
</tbody>
</table>

**List of Charges (Court)**
Arrestees were charged with 38 different violations. However, there was no record of 24 of the arrests in the Dade County Clerk of the Courts system and one charge was unknown.

<table>
<thead>
<tr>
<th>Nature of Violation</th>
<th>Number of Arrests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault/ Aggravated/ Law Enforcement</td>
<td>2</td>
</tr>
<tr>
<td>Assault or Battery</td>
<td>1</td>
</tr>
<tr>
<td>Battery/ police officer</td>
<td>7</td>
</tr>
<tr>
<td>Battery/ Simple</td>
<td>1</td>
</tr>
<tr>
<td>Nature of Violation</td>
<td>Number of Arrests</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Bomb False Report</td>
<td>3</td>
</tr>
<tr>
<td>Burglary/ Unoccupied Structure</td>
<td>7</td>
</tr>
<tr>
<td>Burglary/ Tools/ Possession</td>
<td>3</td>
</tr>
<tr>
<td>Carrying a concealed weapon</td>
<td>9</td>
</tr>
<tr>
<td>City Ordinance</td>
<td>9</td>
</tr>
<tr>
<td>Credit Card (fraud)</td>
<td>2</td>
</tr>
<tr>
<td>Criminal Mischief</td>
<td>1</td>
</tr>
<tr>
<td>Defraud</td>
<td>1</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>9</td>
</tr>
<tr>
<td>Escape/ aiding</td>
<td>1</td>
</tr>
<tr>
<td>Failure to obey</td>
<td>83</td>
</tr>
<tr>
<td>False name/ ID</td>
<td>2</td>
</tr>
<tr>
<td>Loitering or prowling</td>
<td>20</td>
</tr>
<tr>
<td>Loitering/ obstruction sidewalk/street</td>
<td>5</td>
</tr>
<tr>
<td>Marijuana Possession</td>
<td>2</td>
</tr>
<tr>
<td>Municipal Ordinance/ violation/ adopt. State law</td>
<td>5</td>
</tr>
<tr>
<td>No Record</td>
<td>24</td>
</tr>
<tr>
<td>Obstruction</td>
<td>1</td>
</tr>
<tr>
<td>Obstructing Justice/ False Info</td>
<td>6</td>
</tr>
<tr>
<td>Obstructing Police Officer</td>
<td>1</td>
</tr>
<tr>
<td>Obstruction by a disguised person</td>
<td>4</td>
</tr>
<tr>
<td>Obstruction street/ highway</td>
<td>5</td>
</tr>
<tr>
<td>Open Container in a vehicle</td>
<td>1</td>
</tr>
<tr>
<td>Petit Theft</td>
<td>1</td>
</tr>
<tr>
<td>Possession of a controlled substance</td>
<td>1</td>
</tr>
<tr>
<td>Possession of stolen drivers license</td>
<td>1</td>
</tr>
<tr>
<td>Probation Violation</td>
<td>1</td>
</tr>
<tr>
<td>Resisting without violence</td>
<td>62</td>
</tr>
<tr>
<td>Sanitary Nuisances/municipal ordinance</td>
<td>2</td>
</tr>
<tr>
<td>Trespass</td>
<td>1</td>
</tr>
<tr>
<td>Trespass/ Unoccupied Structure</td>
<td>5</td>
</tr>
<tr>
<td>Nature of Violation</td>
<td>Number of Arrests</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Trespass property after warning</td>
<td>1</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
</tr>
<tr>
<td>Unlawful Assembly</td>
<td>31</td>
</tr>
<tr>
<td>Weapon/firearm improper exhibition</td>
<td>1</td>
</tr>
<tr>
<td>Wearing a mask</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>325</strong></td>
</tr>
</tbody>
</table>

On January 19, 2006, Richard Scruggs, Miami-Dade County Assistant State Attorney, appeared before the CIP in response to CIP questions regarding discrepancies with respect to the total number of arrests. During his testimony, Mr. Scruggs confirmed the discrepancies and advised that they can be attributed to several factors.

The State Attorney’s Office reported that it initially flagged all arrest forms pertaining to the FTAA protests. However, this process was discontinued following protests that those individuals were being flagged for either lenient treatment, harsh treatment or special treatment. This resulted in the SAO having problems tracking the arrests. The SAO decided to track the arrests by the court case number. If a case number was issued, the individual was prosecuted by the SAO and can be tracked through the Criminal Justice Information System (CJIS).

The State Attorney’s Office was unable to account for all reported arrests. SAO records show 219 arrests. However, 47 names from the CIP list did not appear on the State Attorney’s list, meaning that there are 47 people that the State Attorney’s Office does not have any record of having booked or prosecuted. There are an additional 27 names on the State Attorney’s list that do not appear on the CIP’s list.
## Disposition of Cases (according to the SAO)

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Felony</th>
<th>Misdemeanor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Convictions</strong></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Conviction/ Credit Time Served/ Fine/ Cost</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conviction and Sentenced</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conviction with fine and cost</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Withheld Adjudication</strong></td>
<td>53</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With fine and cost</td>
<td>17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suspend Entry of Sentence</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit Time Served and Fine and Cost</td>
<td>20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rehab CRT</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Nolle Prosse</strong></td>
<td></td>
<td>119</td>
<td></td>
</tr>
<tr>
<td>Nolle Prosse</td>
<td>98</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nolle Prosse- Completed Pre-Trial Intervention</td>
<td>3</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td><strong>Open Cases</strong></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Bench Warrant Issued</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alias Capias Issued</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>No Action</strong></td>
<td>10</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Dismissed by Court</td>
<td>7</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Acquitted by court/jury</td>
<td>6</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>No Disposition in CJIS</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unable to Locate Information</td>
<td>11</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Cases</strong></td>
<td></td>
<td>219</td>
<td></td>
</tr>
</tbody>
</table>
Some names of arrestees went on “A Forms,” but such people were issued tickets for municipal ordinance violations instead of being booked into the system and incarcerated. Others were given a promise to appear. Some people gave aliases or used John and Jane Doe. There were 11 cases in which the State Attorney’s Office could not locate any information. Seven cases involved juveniles, and their records may have been expunged. To date, the CIP has not received any amplifying information or explanation from the State Attorney’s Office.

The 11th Judicial Circuit Public Defender’s Office represented approximately 98 cases in County Court. Of those 98 cases, 77 were nolle prossed (dropped by the State of Florida), six were dismissed (by the sitting judge), six cases were bench warranted (defendant did not appear in court and warrant was issued), three resulted in pleas, and six went to trial. Of the six that went to trial, three did not reach a verdict (the trial judge granted a motion for judgment of acquittal or the State’s Attorney announced nolle pros after trial commenced), two were found not guilty, and one was found guilty.

**RECOMMENDATIONS**

1. MPD should conduct affirmative training for its officers on the protection of First Amendment rights. It was evident that MPD was not prepared to handle the intermingling of peaceful demonstrators with violent protestors. Police officers should be facilitators of First Amendment rights and only take enforcement action when there is a violation of the law.

2. MPD should have a negotiator available to be inserted into areas where un-permitted assemblies and marches are taking place. The negotiator would facilitate the flow of information, engage in discussions with the un-permitted groups, and provide clear guidance and explanations.

3. MPD should have employed the extraction teams more frequently rather than less lethal weapons and munitions.

4. MPD should inform and reassure protestors, before and during an event, that police officers will respect their right to free speech and protest, so long as the demonstrations are conducted peacefully and through the proper avenues.

5. All police officers should display their agency name, name tag, and/or identification number at all times.

6. MPD should reinforce Departmental Order 11.6.13.3 regarding courtesy. “Even in the face of great provocation, they should be diplomatic in the performance of their duties; and they shall serve the City in the discharge of their duties by controlling their tempers and exercising the utmost patience and discretion.”

7. MPD should reinforce Departmental Order 8.4.2.2 regarding prisoners’ personal property. “Personal property taken from prisoners will be checked in at the Booking Desk at the Miami-Dade County jail.”
8. All dispersal orders should be audible, followed by adequate time to disperse and the communication of a viable dispersal route. MPD should research and purchase other sound amplifying equipment to communicate dispersal orders. Additionally, any future operations of this type should involve planning, training and clear guidance to all participating agencies regarding the issuance of dispersal orders.

9. MPD should provide training to all officers on alternatives to arrest for minor infractions.
The Policies and Procedures Subcommittee, chaired by Brenda Shapiro and composed of Panel members Tangier Scott, Fred St. Armand, and Danny Couch, was responsible for analyzing the policies under which the MPD and its assisting agencies operated during the FTAA protests. The Subcommittee was also responsible for evaluating the training provided to police personnel in preparation for the event. In the absence of the MPD Operational Plan, this Subcommittee was hampered from examining and evaluating the content in order to thoroughly review training policies and use of force policies to ascertain whether policies were adhered to by the MPD and assisting agencies.

Without the Operational Plan, the Subcommittee was limited to a review of thirteen volumes of the MPD After Action Reports, training materials provided by the MPD, and hundreds of hours of video tapes filmed during four days of FTAA events and demonstrations. The Subcommittee sought and received input from Donald Jones, an esteemed Professor of Constitutional Law at the University of Miami School of the Law, and Douglas McLeod a distinguished Professor of Communications at the University of Wisconsin. Presentations by both experts assisted the Subcommittee in reaching its findings. The Subcommittee believes that a review of the Operational Plan would assist in a determination of which, if any, policies and procedures were adopted specifically for the FTAA protests and which, if any, represent new policies and procedures adopted by the MPD for effective general application of law enforcement principles. Therefore, the emphasis in this report is an analysis of the training offered specifically for the FTAA protests and how that training enhanced the policies and departmental orders adopted by the MPD.

ANALYSIS

The Subcommittee and staff reviewed the training materials provided by the MPD and its various law enforcement partners. A comprehensive training effort was designed and delivered with MPD personnel prominent in the leadership of the training effort throughout. Some aspects of the training, however, raised concerns among Subcommittee members:

1. Training in the appropriate use of force policies governing the FTAA event and its attendant demonstrations.

2. The extent to which the applicable policies were distributed to police personnel in the MPD and its assisting agencies so that conformity to the same standard of conduct and accountability could be relied upon.

3. The extent to which the understanding and preservation of First and Fourth Amendment rights of the protestors as well as FTAA attendees and their supporters were embodied in the training program.

14 The United States Department of Justice Subcommittee that was created to assess the Miami Police Department’s compliance with a federal investigation of the Miami Police Department was merged into the Policies and Procedures Subcommittee.
Some questions remain unanswered in this report, but the CIP will continue to pursue its mission to review police policies and procedures in order to make recommendations to the MPD and to achieve the mutual goal of effective law enforcement within the City of Miami. Conclusions drawn and recommendations made herein are based on the information available at the time of publication.

FINDINGS

1. Chief John F. Timoney has extensive, well-documented experience in managing police personnel for large events such as the FTAA.

2. South Florida law enforcement agencies, most notably the MPD, Miami-Dade, and Miami Beach have extensive experience participating in large events requiring interagency coordination.

3. The training agenda was comprehensive in scope and design. It was clearly designed to achieve coordination among the various law enforcement partners and consistency in the manner in which police services were delivered.

4. Training designers sought to assure that all involved were on the same page of the script exemplifying state of the art management tools to be used for large events and their attendant demonstrations.

5. The training designers created curricula drawn from similar experiences in cities around the world, made site visits to those cities in preparation, and enlisted credentialed experts in the drafting and execution of training exercises.

6. Most of the training addressed tactics, use of force, interagency coordination, and legal issues, with less time devoted to training in the preservation of First and Fourth Amendment rights.

7. The legal issues training prioritized familiarization with ordinances and statutes that are likely to be violated and the elements required as the basis for arrest.

8. The most comprehensive session reinforcing the constitutional protections afforded to demonstrators was found in the training curriculum, “Protestor Devices.” Unfortunately, this had the lowest number of attendees.

9. The majority of training hours was devoted to tactical training, coordination, and communication, with an emphasis on those perceived to pose a threat to the safety of persons and property or to be disruptive to the FTAA.

10. The Rules of Engagement drafted, distributed, and reinforced by training were designed with a priority goal of achieving consistency among law enforcement personnel as to the use of force.
11. The training focused primarily on protection of property interests, with less training time devoted to preservation of all citizens' freedom of expression.

SUMMARY OF TRAINING

The following summary is intended to highlight only those aspects of training prior to the FTAA that are of special interest to the Subcommittee.

1. Legal Training: A Legal Training Committee developed guidelines and training for officers on legal issues anticipated to arise during the FTAA protests. The training provided information on parade and rally policies, arrest protocols, and protestors' right to freedom of speech and assembly. The syllabus for the training session on legal issues included:

- Relevant County Ordinances
- City of Miami Parade Ordinance
- Relevant City Ordinances
- Jurisdiction/Mutual Aid Agreements
- Prisoner Processing/ A-Forms
- Relevant State Statutes

Noticeably absent from the syllabus was instruction in First and Fourth Amendment protections and the police officers' obligation to preserve citizens' rights to both freedom of expression and the right to be free of government excessive use of force. After reviewing the legal training manual, the CIP invited George Wysong, the Assistant City Attorney assigned to advise the MPD, to attend a CIP meeting to discuss the legal training provided. Charles Mays, the CIP Independent Counsel asked, “But did you all prepare or provide any training regarding how the officer is to go about respecting a person’s right to assemble, a person’s right to actually reach the intended audience?” Mr. Wysong responded by suggesting that preparing a comprehensive compendium of policies for arrests that could be made, in addition to reducing liability to the City, also decreased the possibility that rights would be violated. Mr. Wysong estimated that the time spent on legal training was 4.5 hours. There were no specific curricula related directly to protestors' right to free speech and assembly.

RECOMMENDATIONS

- Testing designed to determine whether content was effectively communicated should be part of all training, just as personnel are required to demonstrate a mastery of physical skills.
- Course content should include the substance and application of the First and Fourth Amendments.
- Constitutional law professors from the many law schools easily accessible to South Florida should be included among the credentialed experts enlisted to design training material for police personnel.
2. Intelligence Component: An eight-hour training session was conducted for all officers and civilians assigned to intelligence. An Intelligence Training Manual was distributed to participants but not made available to the CIP. An outline of the training was provided, however, and included content related to:

- When to take police action, including situations where a radical group member was destroying property, committing a felonious act, or attacking innocent people.
- The description, previous actions, and affinity of the groups and group members participating in the FTAA protests.
- The directive from the Chief of Police that any intelligence gathering methods utilized must take all reasonable steps to avoid violation of the right to free speech.

The After Action Report stated:

A number of intelligence gathering methods were considered. Officers overtly monitored the groups by attending public meetings. They did not, however, host such meetings or bait individuals to conspire to commit crimes. All groups, but especially the radical groups, needed to be monitored through the Internet and other publicly accessible media. In limited circumstances, certain radical groups and activities required monitoring by covert operations including the presence of undercover law enforcement officers and the debriefing of civilian informants.

Though an aggressive intelligence effort was widely acknowledged, no citizen filed a complaint as to the effectiveness of this effort.

3. Extraction Teams (Taser): The MPD provided the Subcommittee with the syllabus for the ten-hour certification course an officer must complete prior to being authorized to use a Taser. During the FTAA protests, the existing policy allowed for the use of Taser when encountering passive resistance. Since the event, revisions have improved the policy, consistent with recommendations made by the Department of Justice and the CIP. The Subcommittee has yet to determine which Use of Force Policy changes were applicable prior to the FTAA or after the FTAA. The Subcommittee has only been able to determine that there have been significant Use of Force Policy changes. The CIP found that the policy changes generally represent positive improvements to the Use of Force Policy as expressed in Departmental Orders reviewed. The Subcommittee is unable to determine whether the FTAA experience led to such changes.

4. Extraction Teams: Extraction teams were told in training that their mission was “to protect officers from attack by anarchists [sic] with incendiary devices, rocks, slingshot propel [sic] devices, etc. and to pick off violent persons from the edge of the crowd.” This training comprised a two-hour block of presentations, drills, and practice. Not all partners participated in extraction team training, which led to fewer extraction team numbers.

5. Bicycle Response Platoons: Training materials describe state of the art crowd management and arrest tactics. The platoons received fifty hours of training, which also included:
• 5 minutes on “legal updates”
• 45 minutes of video of confrontations between demonstrators and line officers
• Tactics of Political Extremists
• Weapons of Political Extremists

It is apparent to the Subcommittee that Bicycle Platoons play an increasingly prominent role in crowd control.

**RECOMMENDATIONS**

• More time needs to be devoted to training in constitutional protections and substantive legal issues.
• Training should be ongoing, and the experts enlisted to develop training curricula should be selected from the local academic legal community.

6. Mass Arrest Processing: Ten hours of instruction were devoted to arrest processing including:

  • Transportation
  • Preservation of evidence
  • Security of prisoners
  • Control of seized personal property
  • Processing of prisoners to support future prosecutorial procedures

It is clear that there were drop-off areas designated for different types of prisoners (e.g.: designated leaders, violent offenders, injured prisoners, felons, misdemeanors, females, and juveniles). All categories save one are consistent with practical and statutory requirements for the processing of prisoners. “Designated leaders” appears to be a category ripe for abuses such as improper detention, processing delays to illegally deprive individuals of an opportunity to exercise their freedom of expression, and demonstration disruption via extraction of leaders from the group.

**RECOMMENDATION**

• When determining the “least restrictive means” of government action, the department should re-examine the arrest policy to determine whether ticketing is sufficient to accomplish crowd control. Orders to disburse, when disobeyed, give officers the preferred option to ticket the non-compliant citizens rather than arrest them.

7. SWAT Training: SWAT training concentrated on the use of certain less lethal weapons. This decision reflected an effort to increase the probability that such weaponry would be used appropriately to achieve the desired effect. The weapons manufacturers wrote the policies provided to the CIP for review, and are specific as to use, effects, and risks. A review of the Standard Operating Procedures (SOP) attests that very little of the training
gave guidance as to when and how to use less lethal weapons. Some of the video footage reviewed conflicts with manufacturers' policies as to parts of the body to target and activity engaged in by the targeted individual warranting such use. Though MPD SWAT personnel appear in the footage, it is not possible to identify the agency of the officers firing the weapons.

**RECOMMENDATIONS**

- Change SOP 25 Section 1-B to include constitutionally sufficient language to ensure that the use of less lethal weapons is permissible when the officer “reasonably believes” that imminent harm threatens the officer or other persons, including the subject.
- Language should include guidance to the officer as to when, in relation to the time of the offense, less lethal weapons are used.
- Language should be added to distinguish between passive and aggressive classes of demonstrators.
- Language should be added to distinguish between groups and individuals.

8. Embedded Media: Chief Timoney instructed Media participants about the danger of placing themselves between violent protestors and the police line. Little research is available on the role of embedded media in such large public events. The increasing trend to encourage the phenomenon needs further study.

9. Response Platoons: The ten-hour course syllabus lists fifteen objectives, two of which are:

- Lessons learned from other police agencies that have encounter [sic] the anarchists’ movement.
- Students will learn about the type of demonstration tactics used by the various protest groups such as the Black Bloc, environmental groups such as Greenpeace, animal rights groups such as PETA, organized labor, etc. and the importance of protecting everyone's First Amendment rights.

The juxtaposition of these two paragraphs in the training manual appears to link the “anarchists” referenced in paragraph “3” with the protest groups referenced in paragraph “4.” It is unclear as to how this subtle imposition of perception colored the thinking of trained personnel. Repeated statements made by those in charge of training are made to assure the Subcommittee that significant importance was given to the protection of First Amendment rights, but an examination of time commitments and curricula devoted to such training suggests otherwise.

10. Training for Commanders: The forty-hour syllabus for training commanders devotes two hours and forty-five minutes to legal issues including First Amendment issues and Use of Force. Emphasis appears to be on ordinance drafting and enforcement, arrests, use of force, and crowd control tactics.
11. Protestor Devices: Three days were devoted to the sophisticated devices employed by protestors in recent demonstrations held elsewhere. One hour was devoted to legal issues restating the basic principle that protestors and demonstrators have the protection of the First Amendment to freely express their opinions and the right to peaceful assembly.

12. Rules of Engagement: Training in the Rules of Engagement was conducted by Chief Timoney in a video presentation demonstrating the rules and his expectation of restraint, and was shown to all Miami police personnel at roll call. The Rules of Engagement are assumed to be the operative policies governing Use of Force. (The video has yet to be seen by CIP staff.)

CONCLUSION

A review of training materials, video footage, and statements made by Department personnel demonstrates an articulated commitment to protect and serve all participants in the FTAA event. Closer scrutiny and analysis, however, suggests more time and attention were devoted to training personnel to protect property rather than persons, and even less training time was spent addressing the constitutional protections guaranteed to all. The police do not have the luxury of selection. Citizens expect them to protect and serve all. For the most part, the MPD does that admirably. This report is meant to bring attention to those training deficiencies that, when corrected, will best support the policies and procedures that govern the conduct of the officers who serve the public.
SUMMARY OF PROFESSOR DONALD JONES' JANUARY 19, 2006 TESTIMONY BEFORE
THE CIVILIAN INVESTIGATIVE PANEL
Donald Jones is a professor at the University of Miami, where he has taught and written about constitutional law for 17 years. Because of his stellar credentials, he was engaged by the Panel to provide input regarding the constitutional issues arising out of the law enforcement/citizen interaction during the FTAA. To this end, Professor Jones, in addition to attending meetings with Independent Counsel and Staff, reviewed and considered the following material:

- The City of Miami Police Department After Action Reports published after the FTAA.
- Documents provided by the City of Miami Police Department to the Panel addressing planning, preparation, and policing programs regarding the FTAA.
- City of Miami Police Department hourly logs identifying arrests and the deployment of less lethal munitions.
- SWAT training records with respect to less lethal munitions.
- Special Threat Response Unit SOP 25 regarding the use of less lethal weapons.
- Deposition testimony of City of Miami Police Department personnel: Lt. Armando Guzman (SWAT Commander); Deputy Chief Frank Fernandez; Chief John F. Timoney; and Major Tom Cannon.
- Documents describing the legal training provided by the City of Miami Police Department to all officers in preparation for the FTAA.
- MCATI Protester Devices (identifying the different types of instruments/devices used by protestors to obstruct police activity).
- Video footage of law enforcement/citizen confrontations on November 20, 2003.

Special Threat Response Unit SOP 25 sets forth the City of Miami Police Department guidelines for the use of less lethal weapons (p. 9). It is important to understand and appreciate that less lethal weapons can kill a person or cause very serious bodily injury (p. 9). When considering the use of such weapons under the Fourth Amendment and the United States Supreme Court’s decisions in *Graham v. Connor* and *Tennessee v. Garner*, it is paramount to be cognizant of the fact that even where there is probable cause to seize a person, the amount of force used to make such seizure must be reasonable and in proportion to the circumstances that the officer faces (p. 10).

Section I. A. of SOP 25 authorizes the use of less lethal weapons to “[p]revent imminent death or great bodily injury to the officer or to another person, including the subject.” Professor Jones found this section to be constitutionally sound because it sufficiently limits an officer’s discretion to deploy such weaponry to circumstances of impending death or serious bodily harm. This limitation, according to Professor Jones, is consistent with the Fourth Amendment teachings of *Graham v. Connor* and *Tennessee v. Garner* (p. 12-13).

Professor Jones found Section I. B. of SOP 25 to be constitutionally infirm as written. Section I. B. authorizes an officer to use a less lethal weapon to “[a]rest a subject who the officer reasonably believes has committed a crime involving the infliction, or threatened infliction, of serious physical
harm to another person.” Unlike Section I. A., there is no requirement of *imminent* danger to the officer or to another person before lethal weapons may be used, nor does this section provide guidance to a police officer with respect to how close in time the offense must occur before less lethal weapons may be used. Further, the section fails to distinguish between classes of demonstrators: those who are passive and those who are aggressive in their protest posture. Finally, it fails to distinguish between groups of demonstrators and individual demonstrators.

Professor Jones also expressed concern regarding the seeming inadvertent statements of Police Chief Timoney which lead to the incorrect conclusion that whenever a person violates the law, the police may use physical force in response. As an example, Professor Jones referred to a declaration in the FTAA After Report: “Physical force may be necessary when protestors begin to violate laws and assemble unlawfully.” Professor Jones made it clear that he believed Chief Timoney did not intend that conclusion, but he adds that this demonstrates the necessity for the specificity and clarity now lacking in SOP I. B.

Commenting upon the First Amendment protections afforded citizens, Professor Jones observed that the right to freely express ideas and beliefs without government intrusion is paramount to a democracy. Therefore, the First Amendment requires the least restrictive means available to law enforcement before expression can be limited. Using the least restrictive means necessary allows law enforcement to set time, place, and manner restrictions designed to preserve order. Such restrictions, however, should never be used as a pretext to arrest demonstrators. The police cannot limit the communicated expression of demonstrators, only the non-communicated aspects of their expression, such as where and when the expression takes place. Such limitations should be designed to promote and protect the demonstrators’ lawful pursuit of free expression. To this end, the mind-set for the police should be, “How can we promote and preserve order?” rather than, “How and when can we arrest?”

The training programs and manuals provided to the panel and reviewed by Professor Jones show that the MPD trained police personnel to distinguish between passive and aggressive demonstrators. The legal training, however, was deemed by Professor Jones to be too general and devoid of any meaningful guidance or instruction identifying First Amendment rights or what police officers should do to protect and preserve First Amendment rights. Professor Jones also noted his concern that un-permitted demonstrations interfered with permitted demonstrations.
Appendix #2

SUMMARY OF COURT LITIGATION ON FTAA CASES
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Edward Owaki v. City of Miami, et al.
Mr. Owaki alleges that on November 20, 2003 he was injured due to unreasonable, excessive and lethal force utilized by the police officers of Miami-Dade and Broward County in downtown Miami during the Free Trade Area of the Americas Conference. Mr. Owaki was bludgeoned on the head three times by a Broward Sheriff and/or City of Miami police baton, causing serious and permanent injury. Mr. Owaki was then falsely arrested and denied adequate medical treatment despite a visible head injury and repeated loss of consciousness.

The plaintiffs allege that during the Free Trade Area of the Americas Conference in Miami in November 2003, their rights under the First and Fourth Amendments were violated while they were peacefully expressing themselves. The plaintiffs acted lawfully, yet they were trapped and arrested after dutifully following the dispersal orders of various officers from the different police agencies assembled by the City of Miami to provide security. The plaintiffs were arrested and falsely charged with disorderly conduct for doing exactly what the police ordered them to do.

Carl Kesser and Martha Kesser v. The City of Miami and the City of Miami Police Department
On November 20, 2003, Mr. Kesser was injured due to the unreasonable and excessive force utilized by the City of Miami and its police officers in downtown Miami during the Free Trade Area of the Americas Conference. Mr. Kesser was engaged as an independent documentary film maker covering the FTAA. On November 20, 2003 he was in the area of Northeast Third Street and Northeast Second Avenue when he was injured as a result of projectiles fired by the police which struck him—most notably a “bean bag” projectile fired at close range which struck Mr. Kesser in the side of the head causing serious and permanent injury. Mrs. Kesser seeks vindication of her rights for a loss of consortium as a result of her husband’s injuries.

Celeste Fraser Delgado v. Miami-Dade County
Ms. Delgado, a Florida newspaper reporter, alleges that Miami Dade County and its police officers violated her First, Fourth and Fourteenth Amendment rights and her civil rights under Florida laws. These violations resulted from her false arrest and battery during the Free Trade Area of the Americas Conference in Miami on November 20, 2003. As a result of her arrest, Ms. Delgado’s free speech, free press, and free assembly rights were violated, as well as her rights to be free from unreasonable search and seizure, to not be subjected to excessive use of force by police officers, and to not have her property seized without due process.

Bentley Killmon V. City of Miami, et al.
Law enforcement coordinated an all out assault on the First Amendment, engaging in widespread political profiling, and swept the streets of anyone viewed as being an anti-FTAA activist, effectively suspending the Fourth Amendment in the city for ten days. The City of Miami Police Department “spear headed” a multi-agency taskforce carrying out a deliberate plan to disrupt political protests.