

Crowd Management and Protecting Civil Rights

Description

The demonstrations in past years, including the Occupy movements, flash mobs, and sports championships, put law enforcement agencies on notice that we have an obligation to prepare our departments for a proper response to these types of events. The Occupy movement has given us a glimpse into what we can expect to see in the near future. Preparation in addressing these crowds is best achieved through policy, training, and application of how to manage crowds, while also protecting First and Fourth Amendment rights. It is clear that the lessons learned from the Vietnam protests, race riots, and political demonstrations of the past have been forgotten. It is time to dust off your policies, find the long batons, and take your officers back out to the parking lot to work on linear and wedge formations. Law Enforcement must carefully balance the First and Fourth Amendment rights of citizens with the protection of the public and their property. It should be the mission of Law Enforcement to protect lawful activity while identifying and addressing unlawful behavior in crowd management situations.

When drafting policies and conducting training to govern crowd management, multiple aspects must be considered and addressed in order to ensure that Law Enforcement provides an effective response. These aspects include knowledge of the legal standards applicable to First Amendment conduct, proper use of force, and effective information gathering prior to and during the incident. As in all high liability areas, proper policy guidance, effective training, detailed planning, and strong leadership are necessary. Departments that develop a foundational operations plan for their jurisdictions will have the opportunity to examine logistics and assign responsibilities prior to an actual event which is crucial in a high stakes situation such as crowd management.

Issues arise, however, when mutual aid agreements are brought into play. What happens when the standards of one agency differ from another? Whose policy should be the guiding factor? If your agency, for example, precludes a specific use of force that a responding agency does not, should that department use that method? These are questions that departments must ask themselves when drafting or revising their policies.

Departments are encouraged to examine their policies and operational plans in order to specifically address the process and procedure for declaring an unlawful assembly. The definition of an unlawful assembly is usually covered by state statute and should be reviewed when drafting these policies. The manner in which departments must declare an unlawful assembly is clearly identified in governing law. It is essential that Law Enforcement leaders understand the law as they pertain to unlawful assembly. The decision to declare a crowd unlawful must be based upon reasonable and articulable facts. Dispersal orders should be clear, loud, and given multiple times and the crowd must be given clear pathways in which to leave the area. Departments should record the process of declaring an unlawful assembly and how officers should go about ordering and enforcing crowd dispersal.

The development of a comprehensive policy that provides detailed protocol and clear guidance to officers is essential. Departments can start by understanding and incorporating guidelines, such as those recommended by the Department of Justice. Policies must provide clear definitions and should

include procedures for: Officer and Agency Response, Planning for Response (Incident Commander), Authority for the Deployment of Resources, Conducting Crowd Control and Management, Response to Crowd Situations, Declaring an Unlawful Assembly, and the proper Use of Approved Tactics and Weapons. Policies should also contain a section regarding prohibited Weapons for Crowd Control and should contain a protocol for Mass Arrest Procedures. Policies should contain sections regarding Videotaping and Photographic recording of events, as well as a mandated reporting requirement, including supplemental reports. Departments are also encouraged to review reports issued after investigations of Occupy UC Davis¹ and Occupy Oakland² to provide areas of self-analysis in operations and policy.

Departments should also have an operational plan in place for incident documentation, which is an important aid when addressing complaints and preparing civil litigation defense. Incident documentation includes: audio, video, photography, reports, dispatch tapes, use of force reports, arrest reports, and after action reports.

Agencies should also examine the challenges associated with mass arrests and the best methods for handling such actions. A flash mob, for example, could quickly lead to a situation where hundreds of people are being arrested. How will departments transport them, hold them, process them, and provide them with bathroom facilities and food? Who will handle the collection of police reports to support the arrests and work with the court to have them arraigned? Finally, but most importantly, what force will be authorized and in what manner will it be used? Again, these are all vital areas that must be addressed in a department's policy and operational plan.

Training your officers on your agency policy is always important in order to protect agencies and officers from liability. Officers must have a clear understanding of the law, the individual policy, and the department's mission objectives. Most officers have no idea what the basis of a First Amendment violation is, or how their actions can cause one. Training must also focus on the fact that officer discipline and restraint is an essential component in successfully managing crowds. Furthermore, crowd management training should include a review of department policy and procedures, arrest and control techniques, use of force standards, mass arrests, and less-lethal applications.

The First Amendment of the United States Constitution provides that: *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."*

Police agencies, realizing the necessity for a closer look at the First Amendment and the potential liability issues it creates, have established guidelines for departments and officers to utilize when evaluating the effectiveness and adequacy of their crowd control policies. One such agency, the United States Department of Justice, divides its guidelines into three areas: (1) Pre-Event Stage – which discusses how law enforcement will plan for an event or demonstration where First Amendment protections are involved; (2) Operational Stage – which focuses on how law enforcement will respond to the event; and (3) Post-Event Stage – which addresses how and whether information obtained as a result of the event (both during the Pre-Event Stage and Operational Stage) will be evaluated, disseminated, retained, or discarded, as per agency policy.³

During a protest, rally, or other large group gathering, the role of law enforcement officers is to ensure the public's safety, protect lives and property, and to protect the First Amendment rights of all persons

involved in the events. On occasion these goals come into conflict with each other during an active protest or rally. Officers are charged with the task of maintaining order, peace, and safety of individuals at protests or other public gatherings, while respecting and protecting the individuals First Amendment rights. Such a task creates great challenges for the officers and requires a careful balancing act on the part of the officers and their departments.

If we have learned one thing in recent years, it is that protesting and demonstrations will continue, and flash mobs will only increase in occurrence. Advances in technology have provided protest and rally participants with invaluable tools to spread information to a greater number of individuals in a short period of time, resulting in larger, more informed crowds. Waiting to plan accordingly for a proper response until you receive the call that a crowd has gathered will clearly leave your officers and agency exposed. Creating and training officers in proper crowd management policy will protect both your agency and the community you watch over.

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1. Occupy UC Davis The Reynoso Task Force Report, November 2012
2. Independent Investigation Occupy Oakland Response, October 25, 2011
3. United States Department of Justice, *Law Enforcement Guidelines for First Amendment-Protected Events*, October 2011

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