

CROWD MANAGEMENT AND PROTECTING CIVIL RIGHTS

By Eric P. Daigle, Esq.



The demonstrations of the past few years, including the Occupy movements, flash mobs and chaotic crowd actions at sporting events, have clearly put law enforcement agencies on notice that we have an obligation to prepare our departments for a proper response to these events. The Occupy movement gave us a glimpse of what we can expect to see in the future. Preparation to address these crowds is best achieved through policy, training and application of how to manage unruly crowds while protecting First and Fourth Amendment rights.



Not all crowd control situations, however, involve unlawful behavior, and it should be the mission of law enforcement to protect lawful activity while identifying and addressing unlawful behavior.



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 the policy and take the officers back out to the parking lot with long batons to work on linear/wedge formations. Law enforcement must carefully balance the First and the Fourth Amendment rights of citizens with the protection of the public and property. Not all crowd control situations, however, involve unlawful behavior, and it should be the mission of law enforcement to protect lawful activity while identifying and addressing unlawful behavior.

When drafting policies and conducting crowd management training, several aspects must be addressed to enable law enforcement to provide an effective response. These include knowledge of the legal standards applicable to First Amendment conduct, proper use-of-force and effective information gathering. As in all high-liability areas, proper policy guidance, effective training, detailed planning and effective leadership are necessary. Departments that develop a foundation operational plan for their jurisdictions will have the opportunity to examine logistics and assign responsibilities prior to an actual event.

One area departments are encouraged to examine in their policies and operational plans include the process and



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procedure for declaring an unlawful assembly. The definition of an unlawful assembly is usually covered by state statute and 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 it pertains to unlawful assembly. The decision to declare a crowd unlawful must be based upon reasonable and articulable facts. Dispersal orders should be clear and loud and given multiple times, and the crowd must be given clear pathways to leave the area. Departments should record the process of declaring an unlawful assembly and the manner in which the officers order and enforce 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
- Proper use of approved tactics and weapons

Policies should also contain a section regarding weapons that are prohibited for crowd control as well as the protocol for mass arrest procedures. Policies should contain sections regarding videotaping and photographic recording of events and mandated reporting requirements, including supplemental reports.

Considerable attention must be paid to 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 arrest and work with the court to have them arraigned? Finally, and most importantly, what force will be authorized and in what manner will it be used?

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



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PROTECTING FIRST AMENDMENT RIGHTS

Training officers on the agency policy is always important to protect agencies and officers from liability. Officers must have a clear understanding of the law, the applicable policy and the department’s mission objectives. Many officers have no idea what the basis of a First Amendment violation is or how their actions can cause one. 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.”

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.

Police agencies, realizing the necessity for a closer look at this issue, have created 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,¹ divides its guidelines into three areas:

1. Pre-event stage — discusses how law enforcement will plan for an event or demonstration where First Amendment protections are involved.
2. Operational stage — focuses on how law enforcement will respond to the event.
3. Post-event stage — 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.

During a protest, rally or other large group gathering, the role of law enforcement officers is to ensure the public’s safety and to protect lives and property as well as the

First Amendment rights of all persons involved in the events. On occasion these goals come into conflict during an active protest or rally. Officers are charged with the task of maintaining the 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.

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.



Waiting to develop a plan of action for a proper response until after you receive the call that a crowd has gathered will clearly leave your officers and agency exposed.



PAST, PRESENT, FUTURE

It is clear that protests and demonstrations will continue, and flash mobs will increase. 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 develop a plan of action for a proper response until after you receive the call that a crowd has gathered will clearly leave your officers and agency exposed. ■

ABOUT THE AUTHOR

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ENDNOTE

1. United States Department of Justice, *Law Enforcement Guidelines for First Amendment Protected Events*, October 2011.