

**Testimony in opposition to the confirmation of Interim Chief of Police Peter Newsham
by people arrested while serving as Legal Observers during the Inauguration protests:
Peter Newsham does not respect the First Amendment, and should not be confirmed as Chief
Submitted in writing - 3/27/17**

We, Legal Observers who were arrested on January 20th, submit the following testimony to the DC City Council to state our opposition to the confirmation of Metropolitan Police Department (MPD) interim Chief of Police Peter Newsham, Mayor Muriel Bowser's nominee for permanent Chief. In our opinion, he is unfit for the job. The DC City Council must vote to not confirm Newsham, and Mayor Bowser should withdraw his nomination.

He should not be confirmed due to:

- His disrespect for First Amendment rights as evidenced by the blatant violations of those rights we observed as National Lawyers Guild (NLG) Legal Observers by officers under his command during the Inauguration protests of January 20, 2017;
- The fact that he and his department committed these violations despite having been sanctioned in the past for nearly identical violations; and
- His lack of remorse for these violations.

On January 20, 2017, we were deployed with scores of others, as NLG Legal Observers. Our purpose was to monitor police behavior. We were wearing our distinctive "green hats," which protesters and police alike, across the country, including the MPD here, are very familiar with. MPD indiscriminately assaulted and illegally arrested a large group including peaceful demonstrators, Legal Observers, journalists, passersby, and others in the area of 12th and L streets. In the absence of any reasonable suspicion, we Legal Observers were arrested, and eventually, all charges were withdrawn.

NLG, founded in 1937, is an association of progressive lawyers and jurists who believe in the reconstruction of legal values to emphasize human rights over property rights. NLG is the oldest and most extensive network of public interest and human rights activists working within the legal system. Legal Observers are part of the NLG Mass Defense Committee, a network, begun in 1968, that provides voluntary legal support for political activists, protesters and movements for social change. Legal Observers are lawyers, law students and legal workers trained to observe police behavior during First Amendment activities.

We Legal Observers were stationed at 12th and L streets on the morning of January 20, 2017. There, we witnessed, and were subjected to, the following three main violations by the MPD:

- Indiscriminate illegal "kettling" (surrounding) and arrests of press, bystanders, Legal Observers and demonstrators, without warning or an order to disperse;
- Purposeful and malicious use of less lethal weapons, both into, and prior to, the kettle;
- Cruel, inhuman, and degrading conditions of confinement prior to, and after, arrest and transport from the scene, including lack of food, water and restroom access for hours, up to 24 hours.

Indiscriminate kettling

Police circled both sides of a 1-1/2 block radius, with anyone in between effectively arrested and later actually arrested. Without warning, police formed two lines and blocked people at one corner; then, as they went down hill towards 12th Street. Without warning order to disperse, the two lines of police joined other officers. They closed in tightly around everyone one in the area, trapping the people in the large, final kettle. People in the kettle were squeezed, packed in, shoulder to shoulder.

Purposeful/malicious weapon use

As Legal Observers were trying to leave the area, they were pepper sprayed. Other people, caught between the two police lines with no chance to leave, were also sprayed, once advancing police closed within around 20 yards of them.

The most severe police attack occurred at around 10:50am — a full deployment of pepper spray and Stinger

grenades. Stinger CS Rubber Ball Grenades combine pepper spray, tear gas, rubber bullets, and flash bangs, with metal shrapnel that flies out from the ignition. Stinger grenades are a relatively new police weapon and had no place being used at that time.

Police clearly could see that firing their weapons into the tightly packed circle of people would hit them, a use these weapons were clearly not designed or authorized for. The scene was chaotic – in that moment, people were sprayed in the absence of any violent acts. No weapon use could be attributed to non-compliance, since no orders were given.

Cruel, inhuman, and degrading conditions of confinement

The police kettle at 12th and L Streets started at around 10:45am and was very crowded. At around 12:45pm innocent people tried to negotiate their releases - at that time, no arrests had been made. The first arrests did not happen until many hours later, around 2pm. As police started the first arrests, the rest of those in the kettle were held, covered in pepper spray, still without getting access to food, water or restrooms. A number of people urinated on themselves. At around 3pm, when the bathroom situation got critical for many people, people formed a bathroom barrier at the front stoop of a business so people could go with some semblance of privacy. After several more hours, people had still been denied water except for a "shot glass" of water, much later, once they had been arrested and removed to the police training facility.

The arrest process was extremely slow. At first, only one police van was making arrest round trips, later increased by only two more. One Legal Observer was pepper sprayed and hit with a baton to force her in a direction without being given an order or a chance to comply. Once arrested in the late afternoon, having had no water since the morning kettle, she did without until she was given one small cup at around 10pm that night in the cell. In the morning, police gave the group one bottle to share without cups, including one clearly sick person, who drank putting others at risk, and one who did not drink because of compromised immunity.

Another Legal Observer was taken from the kettle and arrested around 4:30. She had no restroom access from around 10:30am-5pm. She had already urinated on herself in the kettle, and had no access to feminine hygiene products until in the custody of the Marshal service the following day. She was then held on a school bus for three or four hours, finally booked and transferred to yet another facility to be held overnight. On her ride from holding to the courthouse, the officers could not secure the stabilizer bar, so it was swinging freely during the trip.

At around 830pm, one Legal Observer, among the last of those kettled, was arrested and brought to the police training center. On the way there, due to the high heat in the van, the Legal Observer's pepper spray started to re-activate. During the approximately half hour the Legal Observer was still confined to the van in front of the police training facility, the Legal Observer's van mates finally persuaded police to treat the pepper spray. Police took the Legal Observer out of the van, while a ranking officer with a star insignia accompanied the officers. In preparing to have water applied, the ranking officer told the Legal Observer to position his head like it was to be "chopped off," adding, "which I would do if I could."

After around an hour in the van, in front of the training center, people were removed and processed, taking about a half an hour. They were then put back in the vans, taken to the jail, and processed a second time there, taking another approximately 45 minutes.

The goal of all this was clearly to have a chilling effect on protest in DC.

The DC Office of Police Compliance has affirmed our observations that day. OPC issued a [report](#) last month detailing the unprovoked attacks MPD inflicted on political demonstrators and others. OPC is tasked with evaluating MPD's handling of First Amendment activities and making recommendations to the Mayor, the Council, and to MPD, in order to reduce police misconduct.

The OPC report cites the MPD Standard Operating Procedure that requires police to issue three warnings before arrests, and to give people a chance to disperse at First Amendment assemblies. The procedure was developed partly in response to Newsham's past disregard for the Bill of Rights. On January 20th, at 12 and L

streets, no warnings were given. In violation of the Fourth Amendment, police acted without probable cause and arrested hundreds of demonstrators and bystanders. The OPC report states it “would likely be a challenging task to make [a] probable cause determination for each person arrested under the circumstances present in the Franklin Park area.” As called for in the report, an immediate, full investigation into MPD’s conduct on that day is necessary.

As President Trump’s agenda unfolds, his policies will encounter only increased resistance and First Amendment assemblies within the District. Newsham’s history of abuse regarding these assemblies, most recently overseeing the abusive police tactics employed during the presidential inauguration, makes him an unsuitable choice.

Those arrested on January 20th in the absence of evidence must have their cases dismissed. As these charges work their way through the court system, defendants must take time from work, school, and families to go to court. This includes school teachers, EMS workers, and nurses, who have been put on administrative leave while facing these charges.

MPD’s actions on January 20th mark a significant departure from recent MPD practices during free speech activity. MPD has not deployed chemical weapons in over a decade, since the settlement of a class action lawsuit stemming from the September 2002 Pershing Park attack. Then-Assistant Chief Newsham ordered officers to encircle and arrest peaceful demonstrators. The case was settled for over \$13 million, and cost DC taxpayers \$11 million plus an additional estimated \$3 million in legal costs. The settlement was partly meant to deter MPD’s unconstitutional practices; it is clear the lesson has been forgotten.

While Pershing Park is seen as clear civil rights abuse, Newsham still defends his actions, telling the Washington City Paper, on Feb. 27, 2017: *“I stand by my decision [on Pershing Park] ... [T]he department has become better for that experience. President Trump’s inauguration shows it. I’m proud of that. MPD is the very best at it.”*

Once appointed interim Chief of Police last year, Newsham returned to his old tricks, abusing the law and punishing people for political expression, to intimidate and silence future protesters. Now, instead of discipline and sanctions, Mayor Browser plans to reward Newsham by making him Chief of Police. This decision is beneath the dignity of this city; the Mayor’s choice cannot be confirmed.

For his responsibility for MPD actions during the inauguration, the City Council must vote down Newsham’s confirmation as police chief. DC residents should call for immediate dismissal of the unfounded charges against those arrested on January and an independent investigation of the MPD — as recommended by the OCR Report — with full prosecution of police wrongdoing. No to confirmation, yes to investigation.

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