

From: [Gregory Gelembiuk](#)
To: [Equal Opportunities Commission](#)
Subject: In support of file number items 61265 and 61250v1
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Attachments: [image.png](#)

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Dear EOC members,

I am writing in support of file number items 61265 and 61250v1.

As an illustration of why such legislation is needed, I'll point to the events of May 30 - June 1 in Madison. Following a peaceful George Floyd protest, a few individuals began trying to break the windows of Goodman's Jewelers with large sticks. Everyone else in the area had remained peaceful, and some were trying to dissuade the very small group causing property damage. In response, MPD officers appeared in riot gear, declared unlawful assembly, and began indiscriminately firing tear gas and pepperspray as they moved to clear all of State St. Those being sprayed were almost all peaceful protesters. Such use of pepperspray is in direct violation of MPD policy, which only permits use of O.C. against individuals engaged in active resistance (e.g. someone fighting an officer) and expressly prohibits use against individuals engaged in only passive resistance. These actions sparked widespread rioting.



I'll note that this is only one of multiple incidents in the last several years in which MPD officers have deployed pepperpray under very questionable circumstances for crowd control. For example, it was recently used against the small number of family and friends gathered

around Alize Carter after she was injured in a hit and run. I'll also note that the pepperspray entered Alize's wounds, causing her further intense pain. Moreover, there appears to be absolutely no accountability within MPD for officers violating the MPD SOPs on use of force.

The manner in which MPD is using less lethal weapons for crowd control is leading to very adverse consequences. A recent news article, entitled "[Research Says Violent Cops Cause Violent Protests](#)", captures the basic point. Its opening paragraph:

"You will be shocked, simply SHOCKED, to learn that after decades of researching effective methods for police response to large crowd actions, researchers have found — and you're never going to believe this — that when cops show up in military gear and get aggressive, they actually make protest violence worse!"

The following excerpt from "[New Directions in Protest Policing](#)" (2015), published in Saint Louis University Public Law Review, illustrates the usual chain of events:

The chaos of the [1999] WTO protests came to be known as "the Battle in Seattle." A committee established by Seattle's City Council to review the episode concluded that:

"[M]embers of the public, including demonstrators, were victims of ill-conceived and sometimes pointless police actions to 'clear the streets'... Our inquiry found troubling examples of seemingly gratuitous assaults on citizens... by officers who seemed motivated more by anger or fear than professional law enforcement."

Seattle Police Chief Norm Stamper, who resigned in the aftermath of the incident, later acknowledged that police (under his command) had over-reacted:

"It was the worst mistake of my career. We used chemical agents, a euphemism for tear gas, against nonviolent and essentially nonthreatening protesters. The natural consequence of which [is] that we were the catalyst for heightened tension and conflict rather than peacekeepers."

Stamper concluded that the police response to protesters heightened tensions rather than de-escalating them, noting that "a whole lot of others would not have acted as they did if we didn't act as we did." After stepping down as Chief, Stamper went on to become a vocal critic of the excessive militarization of police agencies and the overly aggressive police response to protests and other public order events.

A June 11 article in The Intercept, entitled "[Police Attacks on Protesters with 'Less Than Lethal' Weapons Result in Life Threatening Injuries](#)", interviewed Norm Stamper about police responses to George Floyd protests.

As Stamper stated:

I've heard it many times: 'Our job is to protect lives and property, and if I'm just standing around with my thumb up my ass, I'm not doing that. I need to take action'. But the bottom line is, if what I do intensifies the conflict, jeopardizes more people, endangers individuals, then what I have done needs to be examined for its utility. Is it useful to provoke people? Is it useful to escalate tension, which often times leads to violence? And the answer is almost always, no....

I am terribly saddened by what I'm seeing. It's like, 'Oh, for God's sake, do we never learn?' We never learn lessons there for the taking.

In the U.K., the report "[Her Majesty's Inspectorate of Constabulary, Adapting to Protest: Nurturing the British Model of Policing](#)" (2009), was created in part to analyze circumstances that had led to rioting. It notes:

"Indiscriminate use of force by the police can create a sense of unity in the crowd through a common perception of the illegitimacy of police action and corresponding opposition in response. Perceptions of police legitimacy are critical because they affect the crowd's internal dynamics, facilitating or undermining the ability of those seeking conflict to exert social influence over others in the crowd. Consequently, there is an increase in the numbers within the crowd who perceive conflict against the police as acceptable or legitimate behavior, thereby empowering those prepared to engage in physical confrontation with the police. In this way, the crowd is drawn into conflict even though the vast majority had no prior intention of engaging in disorder."

Moreover, as Agnes Callamard (director of Global Freedom of Expression at Columbia University and the U.N. special rapporteur on extrajudicial, summary or arbitrary executions) [wrote in the Washington Post](#), in response to recent police actions at protests across the U.S.:

The responses by police involve possible violations of international law and the principles of necessity and proportionality that should always guide police use of force....The events of the past few days are further highlighting the dangers of "less-lethal" weapons: rubber-coated metal bullets, tear gas, rubber ball projectiles, pepper spray, just to name a few. Under the false allure of "limited damage," the use of these less-lethal weapons has proliferated over the last 20 years....[A]s early as 1990, when the United Nations' Basic Principles on the Use of Force and Firearms by Law Enforcement Officials was adopted, experts warned of the dangers of non-lethal incapacitating weapons. Since then, experience has shown they were right....

[A]ccountability must be delivered. Intentionally targeting media crews, firing rubber

bullets at the face or spraying gas directly at a protester whose sole “crime” was to raise their hands and speak up? Those actions may be non-lethal, but they are most certainly not acceptable. These are behaviors that likely amount to violations of the law, acts of cruelty that should have no place in any police force, let alone ones in a democratic society founded on the rule of law.

Here is an excerpt from my letter to the Madison Police & Fire Commission, discussing use of less lethal weapons during the protests of May 30 - June 1:

MPD handling of Black Lives Matter protests

On May 30 - June 1, MPD responded in a militarized manner to protesters. MPD’s use of force was grossly disproportionate and drastically escalated events, sparking rioting. The officers indiscriminately used pepper spray, tear gas, and impact projectiles (40mm rounds) against peaceful protesters, in a manner that was in flagrant violation of MPD policy.

MPD policy states:

Officers may use O.C. spray when they reasonably believe they are facing active resistance, or its threat, from the subject. O.C. spray is not to be used against subjects who are offering only passive resistance.

But during the protests, MPD officers used O.C. spray all over the place against people who were engaged in only passive resistance or who weren't engaged in resistance of any kind (i.e., not even passive resistance).

For example, as Isthmus journalist Dylan Brogan [reported](#):

Officers in riot gear formed a line around 6 p.m. at the intersection of Johnson and State streets to clear the people who were blocking traffic. Police started spraying pepper spray at demonstrators at close range and walking forward to push people onto the 300 block of State Street. Brittany, a UW-Madison student, was hit with mace while trying to help someone who fell to the street as officers marched toward them.

'I was trying to help this girl up and they spray mace right in my eyes,' says Brittany, whose eyes were bloodshot and barely able to open. 'Fuck, my face hurts.'

Sharon Irwin (Tony Robinson's grandmother) was trying to de-escalate folks - just trying to help - and was peppersprayed in the face. She later described those events to me. Shadayra Kilfoy-Flores witnessed these events and posted on Facebook:

My friend Sharon Irwin was maced trying to STOP people from breaking into Goodman Jewelers. I had to wash PEPPER SPRAY out of my friend's hair. She was keeping the peace. The police sprayed her dead in her face.

Another friend, Nicole Desautels, wrote:

I started livestreaming on State Street at 6:49 pm on May 30th. The police used tear gas and pepper spray on peaceful protesters. It was disgusting. It was clear the police were there to agitate.

A reporter for Tone Madison [wrote](#):

lines of police in riot gear deployed tear gas and pepper spray indiscriminately to split up protestors.... Police in Madison have also joined the nationwide trend of openly assaulting journalists covering the protests. NBC 15 reporter George Balekji was interviewing a protest medic on live TV Sunday night, walking north on State Street past Mediterranean Café, when riot cops threw a tear-gas canister that hit Balekji in the shoulder as it detonated. "Protest was peaceful at this point, no warning was given to stop walking. Why use the tear gas in this scenario?" Balekji asked in a follow-up tweet. The cops in the riot line would have had a clear view of Balekji, the people Balekji was interviewing, and NBC 15's camera person. [note: given the color of the emissions, it's possible this was a smoke projectile rather than a tear gas projectile]

Meanwhile, for impact projectiles, the current MPD policy reads, in part:

4. Impact projectiles may only be used under the following circumstances:

- a. To overcome violent or assaultive behavior or its threat when the officer reasonably believes that the subject poses an articulable threat of harm to an officer or to another person.
- b. To control persons in order to prevent them from harming themselves or others.

Additionally, an officer must reasonably believe that a lesser degree of force would be insufficient to control the situation, or that it is necessary to deliver force at a safe distance from the subject.

5. The intentional deployment of impact projectiles at the face, head or neck is considered deadly force....

8. Absent an imminent risk of harm to officers or citizens, impact projectiles will not be used in crowd control situations. Impact projectiles will not be used to move or disperse crowds.

The level of injury that such impact projectiles can inflict is discussed in [this LA Times article](#). Excerpt:

A homeless man in a wheelchair had his eye bloodied in downtown Los Angeles. A San Jose activist suffered a ruptured testicle after a blast to the groin. A radio reporter interviewing protesters in Long Beach suffered a neck wound. And an untold number of others sustained cuts, bruises and worse during the demonstrations that followed the death of George Floyd at the hands of Minneapolis police....

A 2017 analysis of 1,984 people struck by rubber or plastic bullets found that 3% were killed and 15% permanently injured. The peer-reviewed study, published in the journal BMJ Open, reviewed 30 years of scientific papers worldwide on injuries from kinetic impact projectiles, or KIPs, which include rubber-coated bullets, beanbag rounds, sponge rounds and more.

Dr. Rohini Haar, the study's lead author and an emergency room physician, said that the so-called sponge rounds fired by the 40-millimeter launcher had not reduced problems.

"Because these sponge rounds are used so pervasively, we see a ton of injuries from them," said Haar, a public health lecturer at UC Berkeley. She said there had been a 'false narrative' that 'less-lethal' weapons were less problematic, resulting in little rigorous review of their impact.

JT Jenkins, a friend who I know to be highly reliable in testimony, attended the Madison protests to provide medical assistance and video document events. He wrote me the following:

I personally witnessed 2 youth take rubber bullets [technically, 40mm sponge rounds] to the face. But we were being pushed so hard by the cops I couldn't stop and get bullets from ground or interview the kids. But yeah one had an open wound above eyebrow.

I also have video of them spraying OC spray to face of people treating others on the ground. And video of people throwing up in all directions from the CS gas

It was a lot of gas.

When Madison alders queried Chief Wahl about these events in a letter, he provided an account and case reports that omitted such information.

JT Jenkins commented regarding Chief Wahl's response to the letter from alders:

He lies. I have plenty of video to back it up.

Under MPD policy, officers are supposed to report others who use force in violation of policy, but that didn't happen during the protests (the principle of police solidarity trumped policy). And in incident reports, it's ever so easy for officers to justify whatever action they took - e.g. writing that there was a "threat" of active resistance when there was none, to justify their use of O.C. spray, or writing that they were aiming for the lower body when they shoot someone in the face with an impact projectile. Given the incident report, the use of force will then be judged as within policy.

If you want to verify for yourself that pepperspray and tear gas were being used against protesters in a deliberate manner that completely violated MPD policy, here are a few of many, many videos showing it: [Video 1](#), [Video 2](#), [Video 3](#).

Here is an excerpt from my letter to the Madison Police & Fire Commission discussing use of pepperspray following the hit and run incident that injured Alize Carter:

Alize Carter is a Black woman who was hit and seriously injured by the white driver of a truck, in a hit-and-run incident on June 21. She was crossing University Avenue, approaching a crowd of predominantly Black folks, when the truck barreled through the crowd, striking her. The driver then sped away. MPD officers were apparently nearby, but responding officers waited before getting her proper medical attention (i.e., it apparently took 30 minutes to get an ambulance). Officers asked a witness to move her

across University Avenue, which was done.

As Rob Chappell [reported](#) in Madison365:

S said she immediately called the woman's mother while other witnesses flagged down an ambulance that happened to be nearby. EMTs in that ambulance told witnesses to call 911, as the ambulance was en route to another call.

S said police arrived some time later without an ambulance, and immediately began pushing people back away from the victim — including S and the victim's brother.

"When police arrived, they came up to us and instantly started pushing us back after I repeatedly told them that I was with (the victim) and I was her ride and had been downtown with her and obviously felt obligated to stay with her," S said. "After telling him that I was on the phone with (the victim's) mom he kept pushing me back. Then (the victim's brother) said that it was his sister and he wasn't about to move because he wanted to be with his sister. At the time she couldn't move and couldn't feel anything from her waist down. When (the victim's brother) wouldn't move, they sprayed them with pepper spray which hit the entire crowd that was around."

A Madison police incident report says the police "dealt with several uncooperative individuals while attending to the victim." The report makes no mention of pepper spray.

Videos posted to social media show people suffering with burning eyes, and others tending to them.

S said police did not, in fact, attend to the victim — at least not right away.

"When the police first arrived they weren't even worried about her. Not one officer went to her," she said. "Even when they were pushing us back, not one went to her."

As a Capital Times [article](#) notes, "Police subsequently arrived on the scene and, according to reports, pepper sprayed Carter's brother as he stayed to support her."

As Madison365 [later reported](#):

Police came under criticism for deploying pepper spray against the victim's brother and friends who wanted to stay at her side. Police say they had to deploy the spray to clear a path for paramedics to reach the victim, but video shows a relatively small group gathered around the victim before being sprayed.

Video indeed shows just a small group of friends and family were around Alize when pepperspray was used. The MPD claim that pepperspray was deployed to "clear a path for paramedics" does not appear true. In addition to its effects on family/friends, Alize also was hit by the pepperspray, which entered her wounds, causing further pain. In addition, witnesses report that one (Black) MPD officer called witnesses the "N" word....

[Here is an extremely informative Zoom live recording](#), from an Urban Triage interview of Alize and others, discussing the details of the incident and showing and reviewing video of the police response.

Thus, I ask that you consider passage of file number items 61265 and 61250v1.

Sincerely,

Dr. Gregory Gelembiuk