

E-NEWSLETTER

June 2015

ISSUE: 23



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CAO advises SPD, Mayor on May Day issues

When the City of Seattle responds to emergency situations, the Mayor and other City officials make crucial, time-sensitive decisions with input and support from the City Attorney's Office (Law Department). Within the Law Department are individuals designated as emergency responders who are tasked with managing the legal side of potential emergency situations and matters of public safety.



Photo by Alex Garland/CapitolHillSeattle.com

During protest activities or other potential emergency situations, our role is to provide legal advice on a myriad of issues, including whether any legal documents – such as Proclamations of Civil Emergency and/or related public safety orders - need to be generated and executed. To the extent these documents are required under the circumstances, we are responsible for drafting and populating the documents with the facts and circumstances confronting law enforcement and other officials responding to the protests. While the attorneys at the City's Emergency Operations Center (EOC) are tasked with drafting the documents, the information contained in them is provided in real time by staff at the Seattle Police Operations Center (SPOC), who are gathering data in real time from law enforcement. All of the attorneys involved play an important role, and rely on each other to quickly generate accurate and legally sufficient documents.

When the legal documents are drafted, we submit them to the Mayor for his approval and signature. If the Mayor signs the documents, we must promptly file them with the City Clerk, and the City Council must vote to ratify, modify or reject the legal documents within 48 hours.

Recently, the Law Department played a role in managing the May Day protests. The Law Department's preparations for the annual protests actually started months before. Early this year, the Torts Section of our office, in concert with the Government Affairs Section, the Criminal Division and the Precinct Liaison Attorneys, began brainstorming on some of the issues that City agencies are frequently confronted with during demonstrations – particularly those that later arise

in the context of litigation against the City. Our office wanted to ensure that everyone throughout the City government was on the same page with regard to the appropriateness and constitutionality of our tactics and policies.

In the weeks and days prior to May Day, the Law Department received briefings from SPD and other City agencies, and participated in creating the Emergency Operation Center's emergency preparedness and response plans. The Law Department further provided briefings and legal advice to SPD and the Mayor's Office in advance of the protests.

On May Day 2015, members of the Criminal and Precinct Liaison Divisions, including

Marc Mayo, Beth Gappert and David Lavelle, staffed SPOC. Attorneys in the Civil Division,

including Rebecca Boatright and Andrew Myerberg, staffed the EOC. We were on call from approximately 9:00 a.m. until 11:00 p.m. During this time, we observed firsthand SPD's measured and organized approach to the protests. When called upon, we provided our advice concerning certain proposed actions, and stood ready to assist however needed. While legal documents were ultimately not needed, we were prepared to the extent that they were and worked throughout the day and into the night to ensure that the legal documents were ready to be submitted to the Mayor if requested.



Photo by Alex Garland/CapitolHillSeattle.com

Councilmembers Harrell, Licata question SPD tactics

In the aftermath of May Day, conflicting opinions about the actions of the protesters and the police emerged. While many protesters attribute the escalation of the evening's events to police action, many others commend the work of the Seattle Police Department (SPD). As the night ended, both Chief Kathleen O'Toole and Mayor Ed Murray lauded the department for shutting down the violence early.

A few days later, City Councilmember Bruce Harrell had pointed remarks and numerous questions for SPD brass attending his Safety, Civil Rights and Technology Committee meeting. Harrell suggested the "unprovoked" and "idiotic" actions of police officers had escalated the violence; fellow Councilmember and committee member Nick Licata shared similar concerns. Many protesters who spoke to the committee claimed police were the aggressors. At issue, in part, was the equipment used by police -- particularly the flash bangs and blue-tipped impact sponges from a 40mm launcher. Two women showed committee members wounds from the impact sponges they said officers threw at them. Another speaker held up a "blast ball" that he said had hit him.

Commenting in SPD's favor was Paul Ishii, general manager of the Mayflower Park Hotel, and Bill Weise, manager of the Silver Cloud Stadium Hotel, both of whom commended police for the response and show of restraint. And Michael Wells, executive



Jerry Savage holding up "blast ball"

Police's May Day strategy to be reviewed

director of the Capitol Hill Chamber of Commerce, noted that small businesses were pleased SPD had shut down the protests earlier than on past May Days. Yet Wells voiced concern about SPD using tear gas and isolating the protests to Capitol Hill in the future.

Further public discussion of May Day 2015 awaits an internal SPD review of concerns over officers' use of force. Assistant City Attorney Rebecca Boatright explained that review will be conducted through several channels: "The Force Review Unit will review each individual use of force ; some may be dealt with administratively while others may be forwarded to the Force Review Board for a broader discussion of policy, tactics, and training."



One woman's wounds from impact sponge



Paul Ishii commending SPD

Also, SPD's Office of Professional Accountability will look into matters concerning misconduct and out of policy incidents. The Force Review Unit may suggest changes to training or changes in policy as a result of their findings. Now, under the federal consent decree, SPD undertakes a more structured and formalized investigation process, with more accountability and more defined structured roles. The Department of Justice, a party to the consent decree, as well as the Monitoring Team, will participate in the reviews. An assessment that they may provide would not just be directed towards the May Day protests but in overall control management ranging from the most peaceful to the most volatile protests.

Meanwhile, CAO's Criminal Division has charged 11 people in Seattle Municipal Court with misdemeanors stemming from that night; the charges are obstructing a public officer, failure to disperse, unlawful use of weapons, reckless endangerment and assault. The cases are moving through pre-trial hearings and trials. The charge most frequently filed was obstructing a public officer. About half of the arrests were made along Broadway.

According to CAO's protest policy, charges may be filed if a person is booked into jail for any one of the following reasons:

- Physical assault, force or resistance used against an officer or others.
- Destruction of/damage to property (public or private).
- Threats of physical harm to persons or property.
- Harassment.
- Providing a false name or engaging in other acts of deception.

The CAO policy, dated Oct. 31, 2013, notes the increasing number of cases sent for filing decisions by SPD. "Most often, these cases represent a delicate and difficult balance between preserving an individual's right under the First Amendment and maintaining the health and safety of our community."



Councilmembers and SPD brass

30-year prosecutor values criminal law's human interest

In the City Attorney's Office it's likely you will find lawyers whose sense of justice is the motivating factor for their daily work. Assistant City Prosecutor John Mason is such an individual. Mason has been working in the office's Criminal Division for 30 years. Before settling into the position, Mason worked about a year and a half for King County. Prior to that he worked for ENI Exploration Co., where he managed the Investor Service Department. However, Mason will tell you his time at ENI, and a previous summer associate job at a downtown law firm, meant little to him. "So I quit and resolved to find a job that meant something to me personally," he says.

Biking into work early, Mason starts his days at 7:15 a.m. Tuesday through Saturday. After a police officer writes a report recommending misdemeanor criminal charges, those suspects booked into jail will appear on the in-custody arraignment calendar in one of two King County Jail courtrooms. Mason files the non-domestic violence cases except for those defendants eligible for Community Court, a therapeutic court designed to help people turn their lives around when they've committed lesser, non-violent offenses. Mason then determines the appropriate charges, creates a summary and a sentence recommendation for the courtroom prosecutors to expeditiously process people in custody. Charges are based on the Seattle Municipal Code and include up to about 150 crimes. Mason is also one of the several prosecutors who file out-of-custody retail theft cases.

Working part-time during his three decades here has allowed him the time to recharge after stressful days. It has also offered him the flexibility to step in to cover in other cause areas when needed, such as filling in as the head of a trial team and working on backlogs of out-of-custody filings. Mason says he likes criminal law because "it's more down to earth, more human interest." Unlike civil cases that can take years, his current position allows him to begin the day with a blank slate. "You don't have to worry the night before because you really never know what you are going to get the next day," he says.

When Mason started in the City Attorney's Office, the office was much smaller, less formal and "more loose." Today he finds the system provides "more rationalization, more time, and more work-up" for cases. Though it's been 10 years since he has tried a case, Mason recalls when he would receive cases in the courtroom with no time allowed to familiarize himself with the case or provide work-up. He explained how he found creative ways to address these issues -- using a side entrance near the bailiff for time to read through the case before taking the elevator to the courtroom with witnesses in tow.

Compared with earlier days, Mason finds Criminal Division attorneys now all range from good to excellent. Not only has the quality of practice climbed, Mason observes, but resources are more plentiful and there have been administrative improvements. The office has also created specialized units to handle domestic violence and DUI cases, and two general trial teams.

As for changes in the cases Mason handles, he personally sees a "disturbing trend in protest cases against police lately," with the cases becoming uglier, more dangerous and showing a lack of respect for officers. On one hand, the criminal justice system is offering alternative methods in dealing with non-violent offenses; on the other prosecutors are dealing "more strongly" with certain crimes, like assaults on police



Criminal Division's quality of practice has increased over Mason's 30-year tenure

officers.

Standing up for victims and obtaining good rulings are among the cases Mason finds most interesting. Cases where prosecutors care about the victim are definitely the ones with highs and lows, he says. The highs come with favorable rulings, particularly when it is a tough case or an unfavorable judge. The lows come from the opposite outcomes – losing in court and not obtaining justice for the victim. DUI cases are usually interesting because they are so meaningful for the victim. In DUI cases, the defendants often hire the best attorneys; there are many wrinkles within the cases, and more things that can go wrong.

Due to Mason's love of criminal law and his appreciation for justice, it's not farfetched that even his outside interests have incorporated such notions. One of the benefits of working part-time is having the time to work on an outside project that has been in the making for 10 years. He's finishing an opera dealing with social justice. It is his first attempt and he has composed both the libretto and the score of an opera set during the Puget Sound Indian War of the mid-1850s.

City partners with U.S. Department of Labor on wage theft investigation

The City of Seattle and the U.S. Department of Labor's Wage and Hour Division have agreed formally to share information and coordinate enforcement efforts to combat wage theft, a significant problem in low-wage industries.

The Memorandum of Understanding – the first signed by the Wage and Hour Division with a city in its western region -- aims to boost the Seattle Police Department's ability to investigate alleged wage theft cases and, when warranted, forward them for review by the City Attorney's Office. In 2011 the City Council made wage theft – the intentional failure to pay or underpay an employee for work – a gross misdemeanor, punishable by up to 364 days in jail and a \$5,000 fine.

The ordinance sponsored by now-Council President Tim Burgess also gives the City the power to revoke business licenses for individuals convicted of the crime.

Few workers have brought wage theft complaints to the City – only 11 were filed with SPD by April 2014 --- and the cooperation with the federal government renews hopes of investigation and prosecution. Contributing to the lack of provable cases are the reluctance of workers to report wage theft; lack of proof that the worker performed the work; absence of proof of the compensation promised or scope of work, and lack of proof of the employer's dishonest intent.

According to the formal agreement, the two agencies hope to “more effectively and efficiently communicate and cooperate on areas of common interest, including sharing training materials, providing employers and employees with compliance assistance information, and sharing information as appropriate.”

“People who commit wage theft often target and exploit our most vulnerable residents,” said Seattle Police Deputy Chief Carmen Best. “This partnership between the city of Seattle and the United States Department of Labor puts both local and federal law enforcement officers on the same page, creating better information flow and offering more options to hold wage thieves accountable.”

“By coordinating closely and pooling our resources, we will be better suited to root out unscrupulous employers who shortchange their workers in order to maximize profits,” said Ruben Rosalez, western regional administrator for the Wage and Hour Division. “Seattle's workforce will benefit from this new partnership.” “Enforcement of wage theft crimes is much more than just recovering money owed to the worker who earned it,” said City Attorney Pete Holmes. “Holding employers accountable for wage theft is a matter of preserving human dignity and protecting those who are most vulnerable in our community.”

Casa Latina, a non-profit organization in Seattle, lobbied for Ordinance 123509 that criminalized wage theft four years ago. “Over the years Casa Latina has met hundreds of workers whose bosses have

City partners with U.S. Department of Labor on wage theft investigation

shorted their wages; some of them working for the same companies we have had cases against before,” said executive director Hilary Stern. “It takes all hands on deck to stop wage theft. We welcome this cross-agency cooperation to help build criminal cases against companies who use wage theft as a business model.”

Addressing the damage on an individual and societal scale, Council President Burgess said, “Wage theft is an insidious crime that causes great harm to workers and our whole community. This new partnership with the federal government is another step toward rooting out unscrupulous businesses that abuse their workers.”

“We applaud the efforts of the Seattle City Attorney's Office to increase collaboration with the U.S. Department of Labor to address the issue of wage theft in the city,” said Jorge Baron, executive director of the Northwest Immigrant Rights Project. “Theft of wages is a problem that continues to plague community members generally and immigrant community members in particular. We welcome steps to ensure that unscrupulous individuals and entities who unlawfully deprive our neighbors of their hard-earned wages are held accountable.”

City Attorney salutes his client, Seattle’s “awesome” City Clerk

Editor's note: Last month Pete spoke on behalf of City Clerk Monica Martinez Simmons as she took over as president of the International Institute of Municipal Clerks. Here are his adapted remarks:

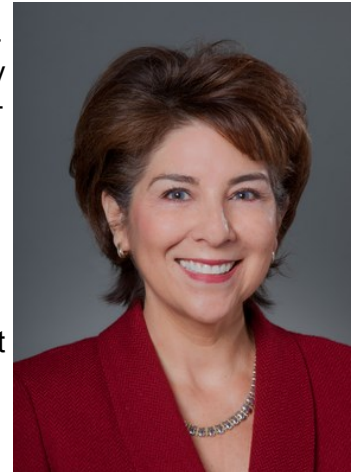
“I’m excited to be here in support of our awesome City Clerk, who also happens to be my client. I’ve learned a lot about the IIMC, and discovered a profoundly relevant professional organization that can fundamentally influence, as Monica noted this morning, critical public policy and process. Now, take Monica’s observations together with the recent Brookings Institution book, *The Metropolitan Revolution*, which calls on cities to lead despite the gridlock and dysfunction emanating from Washington, D.C. and our state capitols. From building affordable housing to raising the minimum wage; providing universal preschool education; reforming municipal police departments; ending a misguided War on Drugs and institutional racism—even taking on global climate change—cities like Seattle and like yours are at the forefront of needed change, by default.

Now consider your own Code of Ethics. You and I are all servant-leaders, called upon amid social upheaval and change to preserve our free society under the Rule of Law. (No pressure, folks!) Knowing this helps me to understand why Monica and I work so well together.

Monica balances these aspirations with the simple truth that we’re all still human beings, and we’re all in this together. Take this lapel pin, for instance. Another simple but elegant Monica creation, now every elected Seattle official wears (or wants) one.

In closing, Monica is already on her second Seattle mayor, second fire chief, and third or fourth police chief. (At the risk of jinxing my 2017 election, however, she’s still on her first Seattle city attorney.) This fall, possibly all nine City Council positions will turn over; three incumbents have already tossed in the towel. Seven of these nine positions, moreover, will be elected by district rather than at-large—the result of a citizens’ initiative on a crowded 2013 ballot amending our City Charter.

My point? In just six short months, Monica and I might be the longest serving officials at City Hall. The *Metropolitan Revolution* will only provide necessary change while preserving stability through the neutral professionalism and calm maturity modeled by Monica. I am proud to call her both colleague and friend. And I can confidently state that the entire City of Seattle is proud of you, too.”



EVENTS

- 6/9/15** Pete will attend the retirement party for Bill Hobson, executive director of Downtown Emergency Services Center, from 5 to 9 p.m. at Fisher Pavilion at Seattle Center.
- 6/11/15** Pete will participate on a panel, "Incorporating Race and Social Justice Principles Into Criminal Justice System Policies," at the Governing for Racial Equity conference at the Washington State Convention Center in Seattle. CAO Criminal Division Chief Craig Sims will moderate the panel. <http://grenetwork.org/wp/>
- 6/15/15** Pete will attend the ACLU presentation of "The State of Civil Liberties at the Supreme Court" from 7:30 to 9 p.m. at Town Hall Seattle. <http://townhallseattle.org/event-calendar/>
- 7/23/15** Pete will attend the reception of the NACO/Stepping Up Initiative from 6 to 7:30 p.m. at the Columbia Tower Club.

LINKS TO NEWS STORIES

- 4/16/15 'Westlake groper' sentenced to 3 years in jail** -- A man who became known as the "Westlake groper" after one of his victims posted a picture of him on social media has been sentenced to more than three years behind bars. (Seattle Times)
<http://www.seattletimes.com/seattle-news/crime/westlake-groper-sentenced-to-3-years-in-prison/>
- 4/23/15 100 drug arrests kick off new push against downtown crime** -- The city's latest — and perhaps most comprehensive — push to clean up the open-air drug market that has long plagued downtown Seattle's retail core has resulted in more than 100 arrests since Wednesday, with many more expected. (Seattle Times)
<http://www.seattletimes.com/seattle-news/crime/90-drug-arrests-kick-off-new-push-against-downtown-street-crime/>
- 5/12/15 Former Seattle firefighter arrested in road rage incident** -- A former Seattle firefighter who was acquitted in a 2014 case of an assault on a homeless person has been arrested on investigation of robbery. (KIRO TV) <http://www.kirotv.com/news/news/former-seattle-firefighter-arrested-road-rage-inci/nmFHD/>
- 5/9/15 Firm plans to appeal position against oil-drilling services** -- Foss Maritime plans to appeal Seattle's position that Royal Dutch Shell can't use the Port of Seattle's Terminal 5 under the existing permit. The company says it intends to provide its customer, Shell, with the services it needs to prepare to explore for oil in Alaska. (KOMOTV)
<http://www.komonews.com/news/local/Firm-plans-to-appeal-position-against-oil-drilling-services-303181201.html>

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COMMENTS AND SUGGESTIONS

If you have suggestions for stories or comments on how we can make this newsletter better, please email kimberly.mills@seattle.gov.

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The Seattle City Attorney's Office is committed to providing the City of Seattle with the highest caliber legal advice to help protect the health, safety, welfare, and civil rights of all.

The City Attorney's Office has four divisions:

The Civil Division represents the City in lawsuits and advises City officials as they develop programs, projects, policies, and legislation. The sections within the Civil Division include torts (claims), governmental affairs, land use, environmental protection, labor and employment, and contracts/utilities.

The Criminal Division represents the City in prosecuting traffic infractions, misdemeanors, and gross misdemeanors in Seattle Municipal Court. The types of cases prosecuted by the Criminal Division include driving under the influence, traffic infractions, domestic violence, theft, assault, and trespassing.

The Administration Division staff provide budgeting, accounting, human resource, clerical and information technology services for the City Attorney's Office.

The Precinct Liaison Division assigns an assistant city attorney as a liaison to each of the City's five police precincts as another way of addressing public safety and neighborhood livability problems.

How to apply for an internship/externship in the Civil and Criminal Divisions: <http://www.seattle.gov/cityattorney/about-us/careers>



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