

## Crowd Control That Can Kill:

### Can American Police Get a Grip on Their New, “Less-Lethal” Weapons Before They Kill Again?

By **Christopher Stone**, *Kennedy School of Government*,

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The new generation of “less-lethal” weapons available to police departments has obvious appeal. If police can avoid charging into a disorderly mob with their police clubs flailing, if they can avoid shooting a deranged man threatening everyone around him, if—in short—they can use less-lethal weapons in place of tactics that risk death and injury both to civilians and to themselves, who would deny them the chance?

The logical assumption that the increased use of less-lethal weapons will reduce injuries to police and civilians explains the enthusiasm with which police departments have purchased a wide array of these new weapons—often with the encouragement of civil liberties groups and community advocates who worry about the police use of deadly force.

Yet, events are beginning to suggest that what seems logical may not be true. Tasers, perhaps the most popular new weapon in the less-lethal arsenal, are increasingly controversial because more than 150 people have died shortly after being “Tased.”<sup>1</sup> Extended-range impact weapons that fire bean bags, rubber bullets, plastic and wooden projectiles, “paintballs,” or “pepperballs” designed to stun or mark their human targets, have also

caused death and serious injuries.

Increasingly, police experts are insisting that the proliferation of less-lethal weapons does not mean that police are using lethal force less often. Less-lethal weapons are not substituting for lethal weapons—they are being deployed in addition to everything else. As a result, the spread of these weapons may lead to more use of force overall, not less.

As the truth dawns—as police departments realize that with these weapons their officers may be using more force and perhaps causing more injuries—many departments are scrambling to put better controls on the use of less-lethal force. In some cases, police chiefs are actually trying to put the genie back in the bottle: literally taking less-lethal weapons out of the hands of their own officers. Others are adopting stricter policies limiting their deployment and insisting that any actual use be followed up as rigorously as the use of lethal force. The reforms have not yet caught up with the weaponry everywhere. In many police departments, the light bulbs are just now coming on, policies being reviewed, and better training being sought. Nevertheless, while lives remain at risk, the tide has turned.

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#### **Rappaport Institute for Greater Boston**

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## Crowd Control Turns Deadly in Boston

If there is any single incident that clearly demonstrated the need for stricter controls on the use of less-lethal weapons for crowd control, it was the fatal shooting of Victoria Snelgrove by the Boston Police Department in October 2004. What made this incident potentially pivotal on a national scale was the decision by Boston Police Commissioner Kathleen O’Toole within hours of the death to take full public responsibility and to promise a full, independent, unfettered inquiry into the shooting. It was a decisive moment, requiring its own kind of bravery. As a major city police chief, who asked not to be named, told one of the authors during the subsequent inquiry, “She did the right thing, but frankly I’m not sure if I—or any of the rest of us—would have done the same.”

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Ms. Snelgrove—a college sophomore—had been standing on the sidewalk across the street from Fenway Park the night that the Boston Red Sox defeated their archrival, the New York Yankees, in the seventh game of the 2004 American League Championship Series (ALCS). She was talking calmly with her friends outside of the garage where her car was parked while police, about 50 feet away, were trying to clear the crowded street of celebratory of Red Sox fans, many of whom were drunk and boisterous. A Boston police officer, using an FN303 projectile launcher, fired a pepper

ball round that hit Ms. Snelgrove in her left eye. That officer later explained that he was aiming at someone else moving through the crowd: an unidentified man whom he had earlier seen throwing bottles at police. The round missed its apparent target, hit Victoria Snelgrove in the eye, and fragmented as it entered her brain, killing her.

Victoria Snelgrove was not the only member of the crowd struck with less-lethal impact rounds that night. About 15 minutes earlier and less than 100 feet away, Boston police officers trying to stop celebrants who were climbing on the girders of Fenway Park’s back wall had fired multiple rounds from FN303 projectile launchers at other celebrants who were climbing on the girders of Fenway Park’s back wall. The impact rounds injured at least two of these celebrants in the face and caused multiple body injuries to a third. The manufacturer of the FN303 warns users never to fire the weapon at a target’s neck or head, but on this night the Boston police officers had injured four civilians, three of them in the face, killing one of them.<sup>2</sup>

### The Stern Commission’s Findings

Boston Police Commissioner O’Toole fulfilled her pledge to appoint an independent commission to investigate the incident. Chaired by Donald K. Stern, former U.S. Attorney for Massachusetts, the independent commission issued its report in May 2005.

The Stern Commission noted how little the Boston Police Department apparently knew about the less lethal weapons it had recently brought into its arsenal. Even among the officers responsible for the purchase, maintenance, and deployment of the FN303s, which the police department had bought (but not used) for crowd control at the 2004 Democratic National Convention. Although senior BPD officials had studied the weapon, spoken with others who used it, tested it, and

trained with it, the commission found there was confusion and disagreement about how the weapons should be issued, who was authorized to fire them, which policies governed their use, and what the rounds would actually do if they struck a person. In light of this confusion, it is not surprising that the commission concluded that the training available to officers in the use of the FN303 had been inadequate—specifically in its lack of attention to questions of when to use the weapon rather than how to use it.

The commission’s report also described how poorly the police had planned for the event, and how the planning failures contributed to the situation where the FN303 launchers were improperly deployed. Despite having distilled a series of crucial lessons from their own experience with a fatality during the celebration after the New England Patriots won the Super Bowl in January 2004, the leaders of the Boston Police Department did not incorporate the recommendations from that review into their plans for the 2004 ALCS with the Yankees. They had not developed a specific set of policies and tactics for “celebratory rioting”; they had not planned in advance to place officers above the street (e.g., on rooftops) in the area around Fenway Park; they had not established and maintained clear lines of command; they had not established explicit rules of engagement and communicated these to commanders and supervisors; and they had not developed and discussed strategies to deal with each of a series of alternative scenarios for how the celebration might unfold. All of these had been explicit recommendations following a similarly tragic celebration after the 2004 Super Bowl, yet the planning for the 2004 ALCS ignored them all.

Finally, the Stern Commission also faulted the performance of the Deputy Superintendent Robert O’Toole (no relation to Commissioner Kathleen O’Toole) who served as overall

operational chief on the night of the final game of the series. While serving as operations chief, Deputy Superintendent O’Toole was simultaneously, by his own choice, commanding specific police units in the streets alongside Fenway Park. This fundamental role confusion was exacerbated as the scene around Fenway Park became more disorderly,

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eroding the department’s command and control systems. Although not trained in the use of the FN303, he personally led the assault on revelers climbing on the girders of the ballpark, firing an FN303 himself, and failed to observe how subordinate officers immediately around him were using their weapons only minutes before Ms. Snelgrove was shot.

The City of Boston agreed to pay a record \$5 million to settle all claims by the Snelgrove family. In addition, Commissioner O’Toole demoted the Superintendent James M. Claiborne, who had been in charge of the planning for the event and who had served as incident commander that night. In addition, two officers who fired FN303s, including the officer who shot Ms. Snelgrove, were suspended.

### **Earlier Warning Signs**

The tragedy in Boston in October 2004 was certainly the most serious incident involving extended range less-lethal impact weapons in crowd control. Yet even before Victoria Snelgrove’s death, civilian injuries during protests and disturbances in other cities had already raised a variety of questions about the use of similar less-lethal weapons to quell disorder. Specifically, problems were emerging

with the accuracy of the weapons, the sizes and types of rounds fired, and officer training.

In Seattle, Mary Elizabeth Williams was struck and reportedly blinded in one eye after a less-lethal rubber bullet struck her during the 1999 World Trade Organization (WTO) protests. The City of Seattle reached a settlement with her for \$105,000, which was the single largest payout that Seattle made to settle cases arising from the WTO demonstrations.<sup>3</sup>

Similarly, in Los Angeles, Melissa Schneider was struck in the eye by a rubber bullet as police broke up a demonstration at the 2000

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Democratic National Convention. She reportedly lost sight in that eye. Her settlement, for more than \$1 million, was the single largest payout to an individual by the City of Los Angeles stemming from the protests. The city also settled a class-action lawsuit, paying \$1.2 million for what plaintiffs claimed were inappropriate dispersal techniques by the Los Angeles Police Department using less-lethal projectiles such as beanbags, stinger rounds, and rubber bullets.<sup>4</sup>

In Cincinnati, following the controversial police shooting of Timothy Thomas in 2001, police officers allegedly fired beanbag rounds without warning into a crowd protesting the shooting. Cincinnati’s city manager acknowledged in 2002 that department procedures at the time of the incident did not address the use of beanbags in a crowd of people. The city subsequently settled litigation brought by U.S. Justice Department, agreeing

to “prohibit the use of [beanbag shotguns and 40 millimeter foam rounds] against a crowd absent the ability to target a specific individual who poses an immediate threat to cause imminent physical harm; and absent the ability to reasonably assure that other individuals in the crowd who pose no threat of violence will not be struck by the weapons.”<sup>5</sup>

Controversy over the use of long-range impact weapons during anti-war protests at the Port of Oakland in April 2003 added urgency to the Oakland Police Department revision of its crowd control policies. Officers had fired rubber and wooden rounds to disperse protesters, hitting at least one person in the face with a less-lethal projectile.<sup>6</sup> The Oakland Police Department’s new Crowd Management/ Crowd Control policy, issued in 2004, severely limits the use of a wide range of less-lethal impact weapons. It prohibits the use of impact weapons “designed to be skip fired or otherwise deployed in a non-directional non target specific manner” (such as stinger grenades) in crowd events and for crowd control.<sup>7</sup> In addition, directional, single-shot munitions, such as beanbags, are banned “for crowd management, crowd control or crowd dispersal during demonstrations or crowd events....” They can only be used against an individual who “can be targeted without endangering other crowd members or bystanders.” Prohibited target areas include not only the neck and above but also the left armpit, spine, kidney, and groin, unless a situation would justify deadly force. OPD Lieutenant Dave Kozicki, an expert on crowd control training, explains: “We restrict the use of a less-lethal weapon to officers who are trained and proficient with the weapon, have been told where to target, and have been trained on when to use the weapon.” Indeed, the Oakland Police Department chooses not to use any pepper ball munitions. “I have not been impressed with weapons like the FN303,” says Lt. Kozicki. “We were fearful of the velocity and size of the munitions and were

concerned that they were too small and could puncture the body.”<sup>8</sup>

### **New Restraint in Boston**

Boston Police Commissioner O’Toole accepted and adopted all of the recommendations made by the Stern Commission. These included:

- 1) that the BPD review its use-of-force policies, creating a general less-lethal category and developing specific use-of-force policies for each less-lethal weapon, limiting each for use by specifically certified officers
- 2) that the BPD improve its training in the use of less-lethal, long-range impact weapons, more thoroughly integrating department policies on when to shoot these weapons
- 3) that the BPD develop scenario-based training for commanders, requiring them to rehearse plans and tactics for dealing with crowds under a wide variety of circumstances using tabletop exercises
- 4) that the BPD strengthen its planning process to incorporate lessons learned from earlier incidents, issue clear rules of engagement, and clearly delineate the roles and command structure in the operational plan.

As for the FN303 itself, Commissioner O’Toole quickly suspended its use after Ms. Snelgrove’s death. In his own report in September 2005, Suffolk County District Attorney Daniel F. Conley cautioned the Boston Police against using the FN303 or similar weapons in future situations similar to that on the night Ms. Snelgrove was killed. Although he did not find any of the involved police officers criminally culpable for Victoria Snelgrove’s death, Conley found “no foreseeable justified reason for any Boston Police officer to ever employ non-deadly force from an FN303 or any other projectile-launching weapon in such instances where there is such a risk of an errant shot striking others with potentially lethal consequences.”<sup>9</sup>

When the Red Sox faced the New York Yankees again at the end of the 2005 baseball season, the leaders of the Boston Police Department appeared to have followed the Stern Commission’s recommendations.<sup>10</sup> Not only were many more officers assigned, but they also were trained to control the crowds using only batons and pepper spray, according to published reports. Unless a field commander believed lives were in danger, only the police commissioner and her top-ranking deputy could

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authorize the use of tear gas or rubber bullet launchers. Finally, those in command would not have other duties.

### **New Restraint Beyond Boston**

A year after Victoria Snelgrove’s death, the incident has become a reference point nationally, cited by officials in several cities as they narrow the permissible use of less lethal impact weapons. “The Boston incident serves as a reminder,” said Arkansas Attorney General Mike Beebe in an opinion recently issued on the use of pepper balls for controlling crowds, “that ‘less-lethal’ means of crowd control may still be lethal in certain circumstances.”<sup>11</sup> Indeed, as a direct result of Boston incident, Washington D.C.’s Metropolitan Police Department put aside 25 FN303s it had recently purchased.<sup>12</sup>

In Seattle, Police Chief Gil Kerlikowske assembled a workgroup in June 2005 to review the Stern Commission report and make recommendations that could usefully be applied to the Seattle Police Department. The workgroup found that several of the Stern

Commission's recommendations would be helpful in Seattle and could reduce the risk of a similar incident there. Specifically, the workgroup recommended strengthening the planning for large events, including the use of scenarios and tabletop exercises, and requiring operational plans to include specific rules of engagement. It recommended requiring a new, annual training program for all potential incident commanders. It also recommended narrowly restricting the FN303 to specially trained and certified SWAT team members, and independent inspections and annual testing of the weapons themselves. The recommendations have begun to be implemented, in part through the Seattle Police Department's latest Use of Less-Lethal Force guidelines, issued in September 2005.

### **The Need for National Standards and Continuing Independent Review**

Learning from experience is not easy for American police. The fragmentation of American policing, with nearly 20,000 separate police departments, makes it difficult for those in one department to draw lessons from experience elsewhere. Professional associations and organizations try to help by providing opportunities for senior officers to trade experiences, but strengthening rules on issues as technical as those involved with less-lethal weapons and incident command requires more than an exchange of stories. Even within a single police department, acting on the lessons learned from past experiences can be difficult.

Recognizing the need to speed the learning within police departments about the use of less-lethal weapons in planning and implementing crowd control, the Stern Commission recommended that local police agencies press the federal government to issue much more guidance on these issues than is currently available. The commission called for national standards, testing, and certification of each new less-lethal weapon. But until the

federal government responds, police agencies themselves will each need to continue the kind of detailed examination that Seattle conducted in the wake of the Boston tragedy.

Equally important, police departments will need to support the kind of independent review that Commissioner O'Toole initiated after Victoria Snelgrove's death as well as permanent oversight bodies. The precise form of independent review of police actions is almost always a matter of controversy. Even in Boston, there is not yet any permanent, independent review board, commission, monitor, or ombudsman able to help the police department step back from the press of daily events and continue to refine policies and procedures on the basis of systematic analysis of local and national experience. Yet the precise form of this review is far less important than its presence and permanence.

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Crowd control is among the most challenging tasks that police departments confront, and recent advances in both equipment and management hold out the prospect that police departments meet that challenge with far less risk to officers and civilians.

But technical advances can increase the risks as well. The Stern Commission's fundamental conclusion was that the Boston Police Department's acquisition of less-lethal weaponry had outpaced its systems for planning, training, and supervision for situations where the weapons would be used.

The equipment and management were out of sync.

This is not the kind of problem that yields to one-time solutions. Changes in crowd control technology, including the development to new less-lethal weapons, is a continuous and accelerating process, always threatening to leave management out of date. If American police departments are to avoid more injuries and more deaths, they will need to invest—as Boston, Oakland, and Seattle are doing—in the continuous improvement of police management and review.

## Endnotes

1. According to the *Arizona Republic's* investigative reporting, for example, there were 153 cases of deaths following stun-gun use as of earlier this year. Their reporting identified 21 cases in which the medical examiners said Tasers were a cause, a contributing factor, or could not be ruled as a factor in an individual's death. Robert Anglen, "153 cases of death following stun-gun use," *Arizona Republic*, May 26, 2005.
2. FHN USA Less Lethal Systems, "FN 303: The Best in Less Lethal response," ([http://www.fnhusa.com/contents/ll\\_303.htm](http://www.fnhusa.com/contents/ll_303.htm)) (October 2005).
3. WTO Settlement, *Seattle Post-Intelligencer*, January 11, 2002.
4. Patrick McGreevy. "Lawsuit from Protest in 2000 Settled." *Los Angeles Times*, May 8, 2004.
5. Memorandum of Agreement Between the United States Department of Justice and the City of Cincinnati, Ohio and Cincinnati Police Department. April 12, 2002. See also Jane Prendergast and Michael Clark. "Unrest in the City." *Cincinnati Enquirer*, April 18, 2001 and William Weathers. "Officers Cleared in Beanbag Shootings." *Cincinnati Enquirer*, November 21, 2002.
6. Robert Gammon. "Oakland: 'Less-Than-Lethal' Weapons Come Under Scrutiny." *Oakland Tribune*, December 13, 2003.
7. Oakland Police Department. "Crowd Management/ Crowd Control Policy." 2004. ([http://www.aclunc.org/police/041109-opd\\_policy.pdf](http://www.aclunc.org/police/041109-opd_policy.pdf)) [October 2005]
8. Interview with Lt. Dave Kozicki of the Oakland (CA) Police Department. October 3, 2005.
9. Daniel F. Conley, District Attorney of Suffolk County. "Investigation into the Death of Victoria Snelgrove and Other Uses of the FN303 on Lansdowne Street on October 20-21, 2004." Pg.8. (<http://www.mass.gov/da/suffolk/docs/091205a.html>) [October 2005]

10. Suzanne Smalley. "876 Police to Deploy after Sox Games." *Boston Globe*, September 30, 2005.

11. Beebe, Arkansas Attorney General Mike. Opinion No. 2005-107. August 3, 2005. (<http://www.ag.state.ar.us/index.htm>) [October 2005]). This opinion was issued in response to a question from State Senator Paul Miller about the use of pepper balls for controlling crowds.

12. Donovan Slack. "Chiefs Quiz O'Toole on Pellet Gun Death." *Boston Globe*. September 29,2005.

## FURTHER READING

**"An Investigation into the Death of Victoria Snelgrove and Other Uses of the FN303 on Lansdowne Street on October 20-21, 2004."** by Suffolk County District Attorney Daniel F. Conley. <http://www.mass.gov/da/suffolk/docs/091205a.html> [October 2002]).

**"Impact Munitions: Data Base of Use and Effects."**

by Ken Jubbs and David Klinger, National Institute of Justice, U.S. Department of Justice, NCJ 204433 (February 2004).

**"Report of the Commission Investigating the Death of Victoria Snelgrove."**

Donald K. Stern, chair. May 25, 2005 (<http://www.ci.boston.ma.us/police/pdfs/report.pdf>) [October 2005]

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**PB-2005-6, October 2005**

**“Crowd Control That Can Kill: Can American Police Get a Grip on Their New, ‘Less Lethal’ Weapons Before They Kill Again?”**  
by Christopher Stone (Kennedy School of Government), Brian Buchner and Scott Dash (Police Assessment Resource Center)

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**A Less Lethal Death: How Victoria Snelgrove’s Death is Changing Policing**

Monday, October 24, 5:30 p.m.  
Bell Hall, 5th floor Belfer Building

**Commissioner Kathleen O’Toole**, Boston Police Department  
**Donald K. Stern**, chair, Boston Police Department Commission Investigating The Death of Victoria Snelgrove and Partner, Bingham McCutchen  
**Carolyn Ryan**, Assistant Managing Editor, Metro, *The Boston Globe*  
Moderated by **Christopher Stone**, Professor of the Practice of Criminal Justice, KSG

**Funding Local Government: Revisiting the Fiscal Partnership**

Wednesday, November 2, 5:00 p.m.  
Bell Hall, 5th floor Belfer Building

**John Hamill**, Chairman and CEO, Sovereign Bank of New England and chair of the Municipal Finance Task Force  
**Representative Rachel Kaprieliam**, Massachusetts House of Representatives and Co-chair of the Joint Committee on Municipalities and Regional Government  
**Linda Bilmes**, Lecturer in Public Policy, Kennedy School of Government; former Chief Financial Officer and Assistant Secretary for Management and Budget at the U.S. Department of Commerce

**Racial and Ethnic Disparities in Violence**

Monday, November 21, 5:00 p.m.  
Bell Hall, 5th floor Belfer Building

**Robert J. Sampson**, Harvard University  
*Other panelists to be announced.*

**The Effects of New Rail Transit: Lessons from Boston**

Wednesday, December 7, 12:00 noon  
Malkin Penthouse, 4th floor Littauer Building

**Matthew Kahn**, Tufts University  
**Nate Baum Snow**, Brown University  
**James Kostaras**, City of Somerville

*More information on events can be found at the Rappaport Institute website at <http://www.rappaportinstitute.org>.*