

Seattle City Clerk's Office  
Clerk File 304446

Item No: ar#231<sup>C</sup>

Title: Letter from The Defender Association to the  
Seattle City Council

Author(s): Eoruchowitz, Robert (Director, The Public  
Defender Association)

Physical description: 2 p.

Original doc date: Dec 5, 1999

Is attachment to (doc#):

Belongs to set: N/A

File name: Mayor 09, Panel 3: Civil Emergency

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

HRC 231

The Defender Association  
810 Third Avenue  
Seattle, Washington 98104  
206 447 3900 Fax 206 447 2349

December 5, 1999

Members, Seattle City Council  
Municipal Building  
Seattle, Washington 98104

Dear Councilmembers:

I write to urge you to vote **NO** on **Resolution No. 30099** relating to the mayoral proclamation of civil emergency declared during the WTO conference.

The Federal Court addressed a similar situation involving a mayor-declared state of emergency in San Francisco following a day of demonstrations in which there were incidents involving property damage as well as peaceful demonstrations. The Court wrote that "The law is clear that First Amendment activity may not be banned simply because prior similar activity led to or involved instances of violence." It added:

The courts have held that the proper response to potential and actual violence is for the government to ensure an adequate police presence, [citation omitted] and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure....

**Banning or postponing legitimate expressive activity because other First Amendment activity regarding the same subject has resulted in violence deprives citizens of their right to demonstrate in a timely and effective fashion.**

The Court added that even if there were a lawful curfew, that would not "justify a selective ban on specific First Amendment conduct during daylight hours." *Collins v. Jordan*, 110 F.3d 1363 (1996)(emphasis added).

The time period of the emergency proclamation has passed. The Council need not act in haste on the proposed resolution. Instead, it should take time to gather evidence on the nature of the situation on November 30, 1999, to determine whether the proclamation was justified.

On its face, the proclamation was unconstitutionally broad. On its face and as applied it was aimed at protesters who wanted to exercise their First Amendment right to expression near the WTO conference. It was not narrowly tailored to apply only to violent persons. The provision prohibiting carrying a gas mask in any public place in the entire city cannot reasonably be related to any identified danger. Given the experience of random and arbitrary use by the police of pepper spray and tear gas,

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

City Council  
December 5, 1999  
Page 2

prohibiting the use of gas masks affected people's right to protect themselves in public.

The curfews and "no protest zones" established by the proclamation on their face are unconstitutional prior restraints on speech and assembly.

Our office has received numerous reports from clients and from our own staff of arbitrary and excessive use of force by the police during the demonstrations. Police use of tear gas seemed at least at times totally unrelated to violence or the threat of it. One of our attorneys, wearing a "legal observer" shirt, was chased down by a police officer and doused with pepper spray from the back, blinding her for thirty minutes. Another attorney observed police squirt some form of liquid irritant into the faces of numerous peaceful demonstrators, who became almost totally immobilized. Until the Council has been able to sort out the violence which preceded the emergency proclamation, it should not ratify the proclamation.

The climate of "emergency" was used to deny arrested persons access to a lawyer, either in person or by telephone, in some cases for many hours. It is in times of stress that fundamental principles of freedom most need protection. The Council should review carefully the major restrictions on freedom which occurred last week. Thank you for your consideration.

Sincerely,

*Robert C. Boruchowitz*  
Robert C. Boruchowitz  
Director

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.