

CONTENT NEUTRAL POLICING OF DEMONSTRATIONS

Prepared by Rebecca Boatright & Kathleen O'Toole, 21CP Solutions
Supported by The Joyce Foundation

August 2022



Table of Contents

About the Authors	2
I. Executive Summary	3
II. Context & Background	4
III. Relevant Law	6
IV. Best Practices & Recommendations	11
A. Community-Informed and Evidence-Based Policies and Training.....	16
B. Communication & Engagement During an Event	18
V. Additional References	26
VI. Endnotes & References	29

About the Authors

Rebecca Boatright is the Executive Director of Risk Management and Legal Affairs for the Seattle Police Department. She received her Ph.D. (Psychology) and JD from the University of Washington and has completed executive leadership courses in government performance at the Harvard Kennedy School of Government and the Police Executive Research Forum's Senior Management Institute for Police. She is a member of the Legal Officers Sections of the International Association of Chiefs of Police and Major Cities Chiefs Association and of the Psychological Services Section of IACP.

Kathleen O'Toole is a lawyer and career police officer who has earned an international reputation for her principled leadership and reform efforts. In addition to serving as both Boston Police Commissioner and Seattle Police Chief, she served as Superintendent of the Metropolitan District Commission Police, Lieutenant Colonel overseeing Special Operations in the Massachusetts State Police, Massachusetts Secretary of Public Safety, and Chief Inspector of the Garda Síochána Inspectorate in Ireland. O'Toole received her PhD from the Business School at Trinity College, Dublin. She is a life member and served on the board of directors of the International Association of Chiefs of Police and also served as a board member and treasurer of the Police Executive Research Forum. She is a partner at 21st Century Policing Solutions.

21CP Solutions

332 S Michigan Avenue, Suite 1032 – T615, Chicago, IL 60604-4434

(844) 767-2127 | info@21cpsolutions.com

I. Executive Summary

Over the past two years, substantial focus has been directed, across multiple sectors, towards re-examining the police response to large-scale demonstrations and other First Amendment events. Rooted in acknowledged missteps by cities and law enforcement agencies to nationwide protests following the murder of George Floyd by Minneapolis police officers, demands for change have led to new policies and laws at the local, state, and federal levels – many of which center on restrictions around police tactics, a heightened emphasis on de-escalation, and reporting of and accountability for police actions. Correspondingly, some have decried a disparate police response when comparing demonstrations spanning the summer of 2020 and the attack on the Capitol Building seven months later. As a result, elected officials, community organizations, non-governmental advocacy groups, law enforcement agencies and professional associations alike have called for enhanced efforts to ensure a police response that is fair, impartial, and grounded in principles of equal protection and due process.

Neither the issues presented, nor the recommendations emerging, are philosophically new. Rather, the current discourse spotlights a recurring topic that has long dominated scholarship and practice around the inherent tension that arises in any civil democracy between the state’s interest in maintaining public order, the public’s right to be heard, and the role of police in balancing these sometimes-competing interests. As new generations of advocates, policymakers, and police leaders across nearly every democratized nation grapple with demonstration management issues that can arise at any point that communities come together, whether in anger, contest, solidarity, or celebration, we submit that attention must be paid to a point that often seems lost in the urgency of immediate action: as leadership turns over, best practices evolve, and political support for police departments ebbs in the wake of unrest, the capacity of departments to sustain reforms becomes challenged.

In this paper, we build on the work of others over the past two years in three steps. We recall first the foundational question of content neutrality from both First Amendment and – as it may play out in a crowd management setting – Fourth and Fourteenth Amendment perspectives. Leaning into the social science research around crowd behavior and human performance, we examine the application of principles of content neutrality in planning for, facilitating, and following protest events, and amplify and expand on practices in these areas that have long proven effective. Second, we examine the role of the

police, community organizers, and policymakers across all levels of government in establishing and supporting the principles of good governance that allow for sustained change and opportunity to heal when, as is inevitable no matter the guideposts in place, crises arise. Third, we present several recommendations based on these findings, **focusing specifically on community-informed and evidence-based policies and training; dialogue and engagement before and during events, including a discussion of dialogue units, media and social media; tactical responses; officer wellness; and local, state, and federal initiatives in support of good governance.**

II. Context and Background

On May 25, 2020, George Floyd was killed by Minneapolis Police Officer Derek Chauvin, who would later be convicted of murder. Video of Mr. Floyd’s death soon went viral, leading to an unprecedented wave of protest events throughout the summer, not only in the United States and Canada but in cities around the world. Within the United States, more than 8,700 large-scale protests, mostly united under the umbrella of the Black Lives Matter movement, were reported between May 25th and July 31st. While most protests were peaceful or limited to non-violent acts of civil disobedience, a smaller but still substantial number were punctuated by significant levels of property destruction and violence, resulting in widespread damage, chaos, and injury, met – in turn – with a police response decried in some jurisdictions as disproportionate and escalatory.¹

In the months that followed, several reviews cited the police response as a primary catalyst of the violence that ensued. The New York Times, for example, cited “problems ... fundamental to modern American policing, a demonstration of the aggressive tactics that had infuriated many of the protestors to begin with.”² Juxtaposing police tactics over the summer of 2020 with what was criticized by some as a tepid approach to those who would go on to attack the U.S. Capitol (and brutally assault an overwhelmed and underequipped Capitol police service) seven months later, many have charged the contrast as emblematic of systemic inequity in how police approach “left wing” versus “right wing” events.

We caution against drawing too close a duality between these two events. However, there is no disputing the catalytic force of the events of 2020 in driving much needed discussion around how police engage with crowds, not just during but before and after events. Indeed, calling the protests a “wake

up call,” the Police Executive Research Forum (PERF) published key recommendations for managing often “leaderless” events.³ Likewise, advocacy groups and cities alike have been uniform in urging change around police tactics and training, operational planning, and communication and outreach well before and following such events.

From the perspective of iterative learning and reform, the recommendations that continue to issue from across sectors reflect important steps towards continued agility to adapt police practices to align with societal expectations and demands. In that respect, deconstructing First Amendment events of high profile over the past two years – almost by definition, events marked by conflict – for purposes of understanding points of failure or missed opportunity is important. When doing so, it is important to look forward in healing rather than backwards in blame, but at the same time we must address the reality that many police departments across the country failed to meet the challenges of the day, with devastating impacts on communities, officers themselves, and the fragile trust between the two.

Reflecting impacts to communities, after-action reviews from cities around the nation are uniform in urging better tactics and training, mechanisms for dialogue between police and crowd organizers and members, and greater restrictions on crowd control munitions. Emphasizing the impact of stress, hunger, and fatigue on human performance, some recommendations have urged greater attention to ensuring that officers on scene are provided regular and adequate opportunity to rest, eat, and hydrate. All these recommendations are valuable in advancing discussion and best practices.

At the same time, however, for those who have long studied police practices, neither the issues presented, nor the recommendations emerging, are philosophically new. To the contrary, the current discourse spotlights a recurring topic that has long dominated scholarship and practice around the inherent tension that arises in any civil democracy between the state’s interest in maintaining public order, the public’s right to be heard, and the role of police in balancing these sometimes-competing interests. With echoes of lessons long learned sounding in the conversations of today, we submit that due attention must also be paid to a point that too often seems lost in the urgency of immediate action: as leadership turns over, best practices evolve, and political support for police departments inevitably ebbs in the wake of unrest, the capacity of departments to sustain reforms becomes challenged.

Indeed, at the heart of the numerous recommendations that have emerged over the past two years is the overarching reminder of the long-recognized critical importance of procedural justice to effective public safety – and in particular, the ability of police to build their legitimacy as unbiased (neutral) actors and decisionmakers.⁴ As we grapple anew with an age-old challenge through the lens of 2022, we should also remain careful not to reinvent the wheel in the name of showing progress where thoughtful restoration and iterative reform, through reflection, is more constructive.

To that end, this paper builds on the work of others over the past two years in three steps. We examine first the foundational question of content neutrality from both First Amendment and – as it may play out in a crowd management setting – Fourth and Fourteenth Amendment perspectives. Leaning into the social science research around crowd behavior and human performance, we examine the application of principles of content neutrality in planning for, facilitating, and following protest events, and amplify and expand on practices in these areas that have long proven effective. Second, we examine the role of the police, community organizers, and policymakers across all levels of government in establishing and supporting the principles of good governance that allow both for sustained change and opportunity to heal when, as is inevitable no matter the guideposts in place, crises arise. Third, we present several recommendations based on these findings, focusing on:

- ❖ Community-Informed and Evidence-Based Policies and Training;
- ❖ Communication and Engagement During an Event (including discussion of dialogue units, use of media and social media, and tactical responses);
- ❖ Wellness; and
- ❖ Local, State, and Federal Initiatives and Support of Good Governance.

III. Relevant Law

The development of sound policies and training curricula must be underpinned by rigorous legal analysis. This section highlights areas of relevant law that must be considered.

The First Amendment, made applicable to the states through the Fourteenth Amendment, provides in relevant part that “Congress shall make no law ... abridging the freedom of speech ... or the right of the people to peaceably assemble.”⁵ Included in First Amendment protections are political demonstrations and protests – activities at the heart of what the Bill of Rights

was written to safeguard. *See Boos v. Barry*, 485 U.S. 312 (1988) (political protests are “classically political speech” which “operates at the core of the First Amendment.”). Courts have consistently held that police may not interfere with orderly, nonviolent protests merely because they disagree with the content of the speech or because they fear potential unrest. *See Cox v. Louisiana*, 279 U.S. 536 (1965) (“constitutional rights may not be denied simply because of hostility to their assertion or exercise”); *Edwards v. South Carolina*, 372 U.S. 229 (1963) (political protest speech is protected even though it invites dispute and may stir people to anger); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”).

First Amendment protections, while broad, are not absolute. The government may not prohibit angry or inflammatory speech in a public forum unless it is (1) “directed to inciting or producing imminent lawless action” *and* (2) likely to incite or produce such action,” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969), “[e]xpression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions.” *Clark v. Cmty. For Creative Non-Violence*, 468 U.S. 288, 293 (1984). To satisfy First Amendment scrutiny in traditionally public forums such as streets, sidewalks, and parks, such restrictions must be (1) content-neutral, or “justified without reference to the content of regulated speech,” (2) “narrowly tailored to serve a significant governmental interest,” and (2) “leave open ample alternative channels for communication of the information.” *Id.* at 293. While most case law challenging such determinations centers around objections to permitting schemes and related requirements, courts likewise evaluate the lawfulness of spontaneous police orders to relocate through the lens of time, place, and manner doctrine. *See, e.g., Zalaski v. City of Hartford*, 723 F.3d 382 (2nd Cir. 2013). In such instances, it is clearly established that government officials may stop or disperse demonstrations where “clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears.” *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940).

If the question is one of legality, whether the government has acted outside of reasonable restraints on First Amendment activity is typically addressed in the context of a claim for retaliatory arrest in violation of the First Amendment

or a claim for wrongful arrest in violation of the Fourth Amendment. To show a constitutional violation under the former, a plaintiff must establish four elements: (1) that he was engaged in protected activity; (2) the officer(s) “took adverse action ... that would chill a person of ordinary firmness from continuing in the [protected] activity”; (3) that the adverse action was motivated by the plaintiff’s protected activity; and (4) that the officer(s) lacked probable cause or arguable probable cause. *Hartman v. Moore*, 547 U.S. 250 (2006). In *Black Lives Matter D.C. v. Trump*, 544 F.Supp.3d 15 (2021), for example, the plaintiffs sued various federal and local law enforcement agencies, alleging, in part, unconstitutional restriction of speech and retaliation, based on the government’s use of “tear gas, pepper spray capsules, rubber bullets, and flash bangs” to clear a peaceable assembly at Lafayette Square so as to afford President Trump a photo opportunity at a nearby church. Over the government’s several motions to dismiss, the District Court allowed these claims to proceed, noting the government’s “shifting explanations” in response to the allegation that the “protesters were removed simply because they were offering a message of racial justice and equality different from the President’s.” Similarly, in *Black Lives Matter Seattle-King County v. City of Seattle*, 466 F.Supp.3d 1206 (2020), the District Court cited to evidence that less-lethal weapons were used indiscriminately against all protestors, not just violent protestors, as sufficient to support likelihood of success on the merits of a First Amendment retaliation claim, so as to warrant the issuance of a temporary restraining order enjoining the use of these weapons for crowd control.

In contrast to a First Amendment retaliation claim, under the Fourth Amendment, an officer’s subjective intent is irrelevant. Rather, an objectively reasonable showing that that the officer had probable cause to conclude that a criminal offense had been or was being committed both survives the Fourth Amendment’s “objectively reasonable” test and defeats a First Amendment retaliation claim. *Nieves v. Bartlett*, --- U.S. ---, 139 S.Ct. 1715 (2019); *Hayes v. Florida*, 470 U.S. 811 (1985) (an arrest is constitutionally problematic only in the absence of probable cause). Implicit in the calculus of probable cause, of course, is the element of *mens rea* – that the subject had intention or knowledge of wrongdoing, rather than simply the act of wrongdoing. Thus, while enjoining for preventing First Amendment activities before demonstrators have acted illegally or before the demonstration poses a clear and present danger is presumptively a First Amendment violation, *Carroll v. President and Com’rs of Princess Anne*, 393 U.S. 175 (1969), where the government (1) is able

to articulate such clear and present danger, (2) has issued an order to disperse in a manner reasonably calculated to be heard and understood by demonstrators, and (3) demonstrators fail to disperse notwithstanding clear order, arrests will generally be upheld under both First and Fourth Amendment analyses.⁶ In contrast, Fourth Amendment allegations will generally stand where no order to disperse has been issued, or the order is not reasonably calculated to be heard, and/or crowd members have not been afforded sufficient opportunity to comply with the order. *See, e.g., Alsaada v. City of Columbus*, 536 F.Supp.3d 216 (2021).

Yet even where law enforcement action can be justified on its face, a Fourteenth Amendment Equal Protection Clause argument will arise where the law is selectively applied in a manner that implicates, directly or indirectly, protected status such as race or gender. “Equal protection’... emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable.” *Ross v. Moffitt*, 417 U.S. 600, 609 (1974); *see also City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (“The Equal Protection clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.”). The first step in analyzing any equal protection claim “is to identify the state’s classification of groups,” or the “classified group” and the “control group ... composed of individuals who are similarly situated to those in the classified group in respects that are relevant to the state’s challenged policy.” *Gallinger v. Becerra*, 898 F.3d 1012, 1016 (9th Cir. 2018). In *Yick Wo v. Hopkins*, 118 U.S. 356, 363 (1886), for example – one of the earliest seminal cases addressing equal protection – the Supreme Court struck down as violative of the Fourteenth Amendment enforcement of San Francisco’s ordinance against launderers in wooden building, where Chinese launderers had been using and occupying such laundries for more than 20 years: “If this means the prohibition of the occupation, and the destruction of the business and property of the Chinese laundrymen in San Francisco – as it seems to us this must be the effect of executing the ordinance – and not merely the proper regulation of the business, then there is discrimination, and a violation of other highly important rights secured by the fourteenth amendment[.]” In contrast, ruling against an Equal Protection brought by an optical corporation, the Supreme Court upheld an Oklahoma statute that prohibited any person who was not a licensed ophthalmologist or optometrist from fitting or duplicating eyeglass lenses without an authorized prescription

on the grounds that no equal protection classification was implicated. *Williamson v. Lee Optical of Oklahoma Inc.*, 348 U.S. 483, 489 (1955) (“The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. We cannot say that that point has been reached here.”). More recently, numerous courts have likewise upheld, over Equal Protection challenge, COVID-related restrictions imposed upon businesses, holding that no suspect class discrimination was implicated. See, e.g., *Tandon v. Newsom*, 517 F.Supp.3d 922 (N.D. Cal. 2021); *Peinhopf v. Guam*, 2021 WL 2417150; *ARJN #3 v. Cooper*, 517 F.Supp.3d 732 (MD Tenn. 2021).

In the context of police facilitation of First Amendment gatherings and returning to the comparisons that have been drawn by some between the events of January 6th and the protests of 2020, some have noted difficulty in reconciling the Fourteenth Amendment’s promise of equality under the law with the contrast in response by some police officers that day. For example, one other writer offered bluntly, “the events of January 6 will go down in history as the day that the 14th Amendment of the US Constitution, which gave Black men full citizenship and promised them equal protection under the law, was exposed as one of the biggest shams that ever existed.”⁷ Similar sentiment has been reflected as well in recent caselaw; in *Tinius v. Choi*, WL 899238 (D.C. March 28, 2022), the plaintiffs cited the differential treatment applied to January 6th rioters in challenging their arrests, over the summer of 2020, for curfew violations, alleging that their treatment by police “is, of course, in marked contrast to the manner in which the individuals who invaded the United States Capitol on January 6, 2021.”

Regardless of the constitutional analysis that might be applied *post hoc* in a court of law, if the question is one of legitimacy of police action, questions of legality are largely irrelevant under principles of procedural justice in the court of public opinion. As observations and common sentiment reflect, even were there factual reasonableness under the First and Fourth Amendments, an order to disperse will be seen as retaliatory if the circumstances that led to its issuance in one situation are permitted to proceed unimpeded in another; that force on demonstrators may survive scrutiny under a *Graham v. Connor*⁸ test of objective reasonableness is of little meaning when force is applied more liberally against demonstrators supporting one cause than against those supporting another. For this reason, it is incumbent on police leaders to recommit to, and advance, best practices in crowd management that move beyond what police may be justified to do, under law, to what police should do

to meet community expectations and uphold core pillars of procedural justice. Simply put, the fact that the government may be able to articulate reasonable time, place, and manner bases for redirecting or restricting the access of crowds to traditional forums is to a large extent irrelevant if that action serves only to delegitimize their authority and increase the volatility of the event.

IV. Best Practices and Recommendations

While anger over the police response to the protests of 2020 signifies an important step in the iterative reform of demonstration management, the fundamental principles of democratic engagement that underscore best practices, existing and emerging, are not new. The Kerner Commission – convened by President Johnson to address the causes of the urban riots over the summer of 1967 – highlighted opportunities to harness community relationships to enable the self-policing of crowds.⁹ Many in law enforcement, even at the time, likewise disavowed the repressive and suppressive tactics that marked the police response to large-scale protests of that era.¹⁰ Across the Atlantic, sectarian violence that routinely perforated the “tentative atmosphere of peace” in Northern Ireland following the Good Friday Accord, as Protestant “Orangemen” paraded through Catholic neighborhoods, challenged police to develop approaches to managing these inherently volatile events that allayed the perspective that police, “in attempting to maintain public order, only placate one community at the expense of the other.” As one author framed the issue:

Theoretically, the authorities have broad police powers at their disposal to head off collisions between the two communities. In practice, however, either using or restraining to use these powers acts as a catalyst for public disorder and violence. This begs the question: What can be done in the short run to prevent these contentious parades from degrading into or touching off sectarian violence, yet in the long run, promote, or at least not inhibit, community reconciliation?¹¹

Similarly, best practice organizations such as the Center for Policing Equity, the Police Executive Research Forum (PERF) and the International Association of Chiefs of Police (IACP) have long promoted approaches to crowd management that center around principles of facilitation rather than control, of dialogue over directive, that in event after event have allowed for even conflicts anticipated to turn violent to be peacefully facilitated to their organic

end.¹² One such example noted by one author of this report is the 2004 Democratic National Convention in Boston, held amidst tremendous security measures as the first major party nominating convention following the terrorist attacks of September 11, 2001. While pundits speculated that hundreds of arrests would be made among the thousands of marchers who took to the streets to protest abortion rights, the war in Iraq, capitalism, and other causes, in full only a handful of arrests were made over the three days of continued activity.¹³

Given the established efficacy of common practice, the widespread failures of police during the initial wave of protests of 2020 can on one hand be seen as an alarming pivot away from established practice and theory, suggesting a breakdown in sustainability of reforms rather than systemic collapse. On the other hand, as reflected in the resounding delegitimization of law enforcement exhibited through the Defund movements nationwide, there is clear need to take this momentum to improve, in iterative fashion, upon existing best practices with planning and tactics that emphasize not simply *de-escalation*, but *anti-escalation*.

Much of the theory around the modern policing approach to crowd management is grounded in research in crowd psychology – an area of social science that seeks to understand the extent to which individual motivation influences or is influenced by group dynamics, how variables underlying crowd behavior interact and shift over time, and – in the interest, as one prominent researcher put it, of “using good theory to do good things”¹⁴ – how policing strategies can evolve to reduce the risk of conflict. Rooted in efforts to address “hooliganism” – crowd violence, disorder, and criminality around football matches in the United Kingdom and elsewhere abroad – some earlier theories embraced concepts such as convergence (understanding crowds as the unified gathering of like-minded individuals), contagion (suggesting that crowd members will ultimately attach unquestioningly to prevailing emotion or get “swept up” in the behavior of the crowd) and de-individuation (explaining antinormative behavior as disinhibition under influence of more collective pressures) to explain unruly crowds not as a gathering of individuals acting with individual agency but as organic whole united around what either began as (convergence) or became (contagion/de-individuation) a common mindset. In the context of football crowd violence, for example, such “mob mentality” theories led to conclusions that crowd disorder was, simplistically, the result of “hooligans orchestrating riots amongst drunken England fans” – perceptions

that were exacerbated, it has been argued, by media sensationalism. Such views, in turn, have led to a trend in what preeminent crowd psychology scholar Professor Clifford Stott and colleagues have characterized as reactionary “panic laws,” where “legal and policing powers are being extended to a level that threatens both civil and human rights of fans, often in the absence of any proof – to a criminal legal standard – of engagement in violence or disorder.”¹⁵

The danger in misunderstanding the dynamics of the football crowd as an organic whole that must be controlled, these scholars continue, is that the focus on “crowd control, zero-tolerance, and ‘show-of-force’ policing has not only failed to control the problem, but in many cases has exacerbated it.”¹⁶ Moreover, it is argued, such group “contagion” approaches to understanding crowd behavior are insufficient in explaining the *process* by which a crowd may so coalesce by failing to account for factors, and the dynamism of those factors, at play in such process. Rather, these researchers submit, three fundamental premises should guide such inquiry: (1) that groups of individuals who attend events with the intention of engaging in violence, the extent to which they are organized, and the seriousness of the violence is typically exaggerated; (2) crowd violence is atypical, often spontaneous, and usually driven by situational dynamics; and (3) crowd violence often involves individuals who did not attend events with the intent to engage in violent acts. If, then, the purpose of the inquiry is to identify opportunities to mitigate the potential for escalated crowd behavior upstream of the point at which crowd behavior turns troubling, *social identity theory* provides a more promising framework to guide practice.

Social identity theory, as a construct, proposes that one derives their sense of identity – their “stable sense of self and resolved security in one’s basic values, attitudes, and beliefs”¹⁷ – from their membership in particular groups (family, team, profession, etc.), established through a three-stage cognitive process: (1) social categorization, in which we categorize individuals, including ourselves, in order to understand who they are and their role in society; (2) social identification, in which we take on the identity of the group(s) with whom we have categorized ourselves and attach emotional significance (self-esteem) to this identification; and (3) social comparison, in which we compare the group(s) to which we belong (in-groups) to other groups (out-groups). In order to maintain our self-esteem, it is argued, our in-group must compare favorably to others; where there is misalignment, competing group identities can result in open hostility and competition.¹⁸

For purposes of crowd management, social identity theory carries significance for understanding the impact of a police response in fostering in-group/out-group separation and conflict driven by an imbalance in power. While individuals may join a protest for myriad reasons and in support of different causes, it is argued, a police response that fails to differentiate among individuals or segments within the crowd and modulate their approach accordingly, foreseeably serves to unite the crowd in competition against the common “other” of the police, thus fomenting the very conflict the police are seeking to avoid.¹⁹ A paper presented by the Swedish National Police, in discussing the formation of their dialogue units (discussed later in this report) explains this dynamic well:

If the police carry out a collective intervention against demonstrators, it creates an “us versus them” situation which may lead to [the result] that a group which started out as heterogeneous will unite through the perception of the police as an assailant. This leads to a considerable risk that the conflict may escalate and that the police may be obliged to resort to increasingly robust methods. This may have the effect of increasing group solidarity still further in the group.²⁰

The playout of this dynamic in cities across the country over the summer of 2020 evidences support for this theory. After-action reports are consistent in citing to crowd perceptions of police over-reaction in response to violent actions of relatively few. Failing to differentiate between those actors and the vast majority of the crowds assembled peaceably served to unite crowd momentum around a shared anger now directed towards the police then present as the purveyors of unwarranted (illegitimate) intervention, rather than towards the system at large they believed had enabled the death of George Floyd.²¹ One report, prepared by Professor Stott, provides an analysis of the response of the police in Seattle, Washington to the initial wave of protests in early June 2020, summarizing how social identity theory played out to escalate and prolong the protests that continued over the course of the summer:²²

The current study suggests the [Seattle Police Department] policy and training for the management of crowd events ... positions the protection of First Amendment rights as a primary strategic goal but this is caveated against the recognized obligations the police hold to protect public safety and prevent criminality. ...

While the operational approach of the SPD is underpinned by contemporary science it also draws upon an outdated and flawed theory of ‘mob psychology’ to understand the dynamics of conflictual crowd situations. ... [T]he current study suggests this problematic conceptual understanding combines with statutory instruments to reinforce a policing approach that a) underutilizes de-escalation through dialogue and b) becomes overly reliant on the indiscriminate and disproportionate use of force against crowds.

The study suggests that over the course of the four days, SPD became locked into a cycle of escalation, with little option but to deploy public order resources ready to react with force where the SPD judged it was required and lawfully justified.

It is also apparent that the nature of the protests began to change behaviorally as a consequence of these police crowd interactions, moving away from peaceful protests about issues related to the murder of George Floyd toward demonstrations reasserting rights targeted directly at SPD. These interactional dynamics also appear to have underpinned the emergence of periodic opportunist looting and destruction.

Thus, during the first four days of protests in Seattle, the data indicates that collective conflict emerged and escalated from patterns of crowd police interactions. These were characterized by a lack of police community dialogue and an over reliance by the SPD on the indiscriminate use of force.

Consequently, the data is consistent with the conclusion that crowd police interactions during the first days of the demonstrations in the city reshaped protester identity. These social psychological processes may then have played a key role in driving the observed escalations within and across events as well as motivating future protests in Seattle.

The police influence on this dynamic, it has been proposed, can be collapsed into three primary considerations: (1) the degree of fairness and expediency in facilitating public processions; (2) the interaction between the police and the protesters on site and the responsiveness in addressing or accommodating demands by protesters; and (3) the degree of neutrality displayed towards groups with different political views.²³ Consistent with these factors, and

noting the “striking parallels” to pillars of procedural justice,²⁴ best practice in crowd management urges agencies to lean into the established principles of community policing that have proven effective in building positive police-community relationships.²⁵ Drawing as well from a large body of work in the form of community-based sentinel event reviews and after-action reports from jurisdictions around the country, community, police, and professional best practice bodies are overwhelmingly united around strategies to build legitimacy of the police role in facilitating peaceable crowd events by empowering individuals within the crowds with the knowledge and opportunity to self-regulate its peaceable activity and address on their own isolated acts of deviance. Recommendations that have issued fall, broadly, within the following five categories.

A. Community-Informed and Evidence-Based Policies and Training

The overarching goal of any community policing strategy is to establish a partnership between community and the police to identify and address public safety concerns. (“With the police no longer the sole guardians of law and order, all members of the community become allies in the effort to enhance the safety and quality of neighborhoods.”)²⁶ Elemental to the trust-building that is foundational to effective community policing is not just transparency into policy, training, and operations but opportunity for the community to engage upfront in the development of policy, training, and operational priorities and strategies.²⁷

The importance of establishing strong community partnerships and relationships with community leaders who can serve as liaisons in moments of crisis has long been recognized and, in the aftermath of the George Floyd protests, has been re-emphasized by both those in the practice of policing and those who practice in the field of reform. A report from the Major City Chiefs Association in review of the civil unrest of 2020, for example, ranked community outreach as the top priority for improving police response to future protests.²⁸ Guidelines issued by the Center for Policing Equity, an organization dedicated to evidence-based social justice reforms, cite foremost among their recommendations the importance of partnering with community organizers to facilitate an understanding-based approach to facilitating crowd events. Our recommendations echo the importance of leaning into community engagement.

Recommendations:

- ❖ Partner with community advocates to develop training around crowd management that emphasizes principles of relational policing, the role of policing in America, and how perceptions of inequality can be exacerbated by perceptions of an uneven approach to crowd events. Consider using the perception of many around a contrast between police response to the protests of 2020 and the Capitol riots as a case study to this point.²⁹
- ❖ Acknowledging the significant gap in oversight of independent police trainers,³⁰ establish protocols requiring that all contracted trainers are appropriately vetted to ensure alignment with these recommendations and best practice.
- ❖ Recognizing that minority communities often hold deep distrust of police, actively work to develop connections with community leaders with whom there may be historical tension, with a goal of establishing opportunity for dialogue in advance of and during potentially charged events.
- ❖ Leverage academic partners to inform police training on social identity theory and the dynamics of crowd behavior in response to police action, as described in this paper and supporting references.
- ❖ Develop mechanisms to engage diverse representation of community stakeholders in development of policy and training relating to facilitating First Amendment events, including cultural considerations that may arise.
- ❖ Provide opportunities for stakeholder groups to learn about less lethal tools that may be necessary for crowd control, including circumstances in which they may be used and policies around their use.
- ❖ Include considerations in policy and training that will inform reasonable time, place, and manner restrictions and how protest leaders might be engaged in informing the determination of alternative options. For example, if certain routes will be determined off-limits, establish clear and consistent criteria for so designating (such as major routes to hospitals or other emergency routes) and solicit collaboration with community leaders in messaging the deliberative considerations supporting these determinations and identifying alternative routes.
- ❖ Where intragroup conflict appears likely (e.g., where, as seen throughout 2020, factions representing competing viewpoints are

likely to converge or where members of a group appear intent on disrupting an otherwise peaceful event), empower stakeholder representatives to inform training and tactics for defusing/deterring the conflict alternative to police intervention.

- ❖ Specifically include mechanisms for ensuring active communication with crowds during events in policy and training. Recognizing that some groups may be more receptive to police engagement, emphasize the importance of heightened efforts to protect against perceptions of favoritism towards one group over another.
- ❖ Reconvene stakeholder groups after events to identify lessons learned and opportunities to further refine policy and training.

B. Communication and Engagement During an Event

1. Dialogue Units

As earlier noted, a common thread throughout after-action reports reflecting on the police response to the civil rights protests of 2020, and consistent with crowd psychology theory that emphasizes the de-escalating effect of grounding police action in principles of procedural justice, was the unifying perception of many crowd members that officers were indiscriminate in their actions. Efforts of police to move whole crowds in response to the acts of a few were received as acts of injustice, particularly among crowd members who had no information as to what was occurring in other parts of the crowd or context for police action. The default assumption, accordingly, was that it was their simple act of assembly, and the purpose of their assembly, to which the police were reacting.

While the principles of outreach, engagement, and transparency have long been fundamental to managing large crowds, over the past two years a growing number of agencies in the United States, borrowing from structures common in the UK and Europe, have begun to formalize units dedicated to open channels for communication and information flow. Consistent with core tenets of social identity theory (1) that collective action in a crowd can be both enabled and constrained by shared social identity, (2) that the normative action of the shared identity (what crowd members will or will not do) is situational and dynamic, and (3) can thus be reshaped based upon intergroup actions throughout the event, these practices are based upon three conclusions: that

“the most effective means of maintaining peaceful and consensual relations between the police and a dynamic crowd is through:

a) a strategic approach to policing protest which is centred upon the facilitation of peaceful behaviour within a crowd; b) a tactical response which increases police capability for dialogue and communication with crowd members; and c) a graded, differentiated and information led approach to police use of force.”³¹

Dialogue (or Public Order/Liaison) Units are specialty units missioned to support this approach by serving as a link between police commanders and community/crowd members before, during, and after crowd events. Based on a reorientation of tactics by the Swedish National Police in the late stages of the civil unrest that broke out during the 2001 European Union Summit in Gothenburg, Sweden, dialogue units seek to gain the cooperation of crowds through negotiated agreement and a more individualized (“humanizing”) approach, leveraging officers whose sole objective in such events is to serve in the “softer” role of liaison and facilitator. Now common in European agencies, the positive impact of such an approach has been well validated:

We contend that dialogue and liaison were effective because they allowed for an ongoing dynamic risk assessment that improved command-level decision making and enhanced police proportionality. The subsequent impact upon crowd dynamics allowed for an improved capacity for proactive public order management, encouraged ‘self-regulation’ in the crowd, and avoided the unnecessary police use of force at moments of tension.³²

The Seattle Police Department’s Police Outreach Engagement Team (POET) is one example of a unit that, while ancillary to regular duty, is specially stood up in advance of, during, and after first amendment events to balance, collaboratively with crowd leaders, organizers, and participants, free expression with public safety challenges. Serving in khakis and polos, rather than regular uniform, unit members serve as liaisons between crowd organizers, members, and operational commanders, checking on crowd members’ well-being, and offering aid and guidance as requested or needed. The inherently anecdotal nature of the analysis aside, this unit has experienced marked success –

notably, in incidents that historically have been rendered volatile by small groups of actors – in dissuading such individuals through demonstrated cohesion with the larger crowd and creating opportunity for events to continue uninterrupted.³³

Recommendations:

- ❖ Consistent with recent recommendations from the Police Executive Research Forum stemming from the events of Summer 2020, and in keeping with European models for dialogue units, we strongly urge police organizations to develop cadres of officers who can serve, in crowds, as liaisons between crowd members/organizers and line police and field commanders.
- ❖ Consider deploying a Media Field Liaison, or an in-the-field Public Information Officer, who can serve to manage real-time communications with media on-scene.³⁴
- ❖ Recognizing the often-blurred lines between mainstream and “non-traditional” media such as bloggers, online news sites, etc., ensure reasonable access to information by all media, without undue concern around media credentialing.³⁵

2. Media/Social Media

The use of social media by cities (emergency operations centers) and police agencies in advance of and during protest events is an opportunity to leverage multiple media to both facilitate situational awareness of activities in the crowd and disseminate information quickly and efficiently.³⁶ In addition to providing information about traffic routing, transit disruptions, first aid locations, and other logistical matters, social media can also be used to relay to members of the press and media outlets times and locations where agency officials or public information officers will be available for briefings. Further, when used consistently as a routine form of communication in disseminating public information, social media provides opportunity for departments to open greater awareness into policies, training, and practices in support of equitable and community-oriented policing.

The prevalence of social media also demands vigilance against misinformation, disinformation, and malinformation – whether resulting from misperception, misunderstanding, or deliberate intent to agitate³⁷ – that may be spread by others in advance of and during protest events. So prolific that it is listed by the World Economic Forum as a threat to global society generally,³⁸ the

pervasiveness of false narratives on social media presents unique challenges to law enforcement in the context of demonstrations or civil unrest, where “[t]he circulation of mis- and dis-information ... can cause confusion, stoke tensions and distract from factually correct information.”³⁹ At the same time, both empirical research⁴⁰ and practical experience support that fact-checking social media can have meaningful impact in mitigating the risks of disinformation. Consider, for example, the Boston Police Department’s use of social media in the days following the Boston Marathon bombings:

Early in the afternoon on April 17, CNN reported that an arrest had been made in the case. Within minutes, other media outlets echoed that report. Tweets by CNN and the Associated Press containing this report were retweeted more than 5,000 times. BPD responded promptly, also through Twitter, that no arrest had been made. CNN retracted its report almost immediately, and the BPD tweet was amplified by nearly 11,000 retweets.⁴¹

Without discounting cognitive and social factors that will render some segment of the population inherently resistant to correction of false information,⁴² sufficient evidence supports that, at least to the extent false beliefs are driven by an information deficit, the impact of mis-, dis-, or malinformation can nonetheless be meaningfully mitigated through timely correction.

Recommendations:

- ❖ Agencies and local governments should develop social media strategies to aid in the dissemination of information to members inside and outside of the crowd.
- ❖ Public Information Officers or agency officials should be made available to the media at regular intervals.
- ❖ Where safety considerations require restrictions, media strategies should include explanations as to the reason for restrictions (for example, the importance of keeping open and clear major routes to hospitals) and the alternative options available to the crowd.
- ❖ Agencies should use media briefings and social media as opportunities to reiterate their commitment to supporting the rights of the crowd to speech and assembly.
- ❖ If prior communications have been subsequently deemed false, acknowledge and correct the content.
- ❖ While avoiding unnecessary or unproductive engagement, agencies, emergency operations centers, and impacted local government

departments should maintain situational awareness of social media postings conveying false information and provide timely correction.

3. Tactical Response

At the core of the social identity model of crowd behavior is the understanding that where police action and use of force is disproportionate to the behavior of the crowd, it will be seen as illegitimate and drive collective action that legitimizes and empowers conflict with the crowd. In stark contrast to the escalated force model that dominated much of American protest policing in the middle decades of the 20th century, premised on the belief that a dominant show of force by police will serve to generate crowd compliance,⁴³ it is now widely recognized that how police initially present can have tremendous influence on how they are perceived by the crowd. As described in a 2010 Police Executive Research Forum report on best practices for crowd management, “Showing up in riot gear communicates that you’re ready to fight.”⁴⁴ Both in their initial response and in actions taken during a crowd event, police agencies should take care to ensure that they do not signal through their actions and presentation an invitation for escalation.

Recommendations:

- ❖ Avoid presenting in “hardened” appearance; if hard gear may become necessary, arrange to have protective equipment nearby and accessible, but officers should initially deploy in their regular uniforms.
- ❖ Employ tactical strategies that emphasize de-escalation.
- ❖ Use acoustic amplification (e.g., de-weaponized Long-Range Acoustic Devices (LRAD)), message boards, or other means to maximize communications with the crowd.
- ❖ Where isolated actors in the crowd are observed engaging in criminal acts, utilize dialogue units to engage crowd members to help deter the conduct or identify the actors.
- ❖ If action is taken against individuals engaging in criminal acts, utilize dialogue units and acoustic amplification to warn those individuals and provide notice to the crowd as to actions that may be taken.
- ❖ Ensure that any force used against individuals accords with agency policies and is reasonable, necessary, and proportionate to the circumstances at hand.

- ❖ If force becomes necessary to move a crowd, ensure warnings are communicated to the crowd and avenues for egress are identified.

4. Wellness

Reports issued following the crowd events of 2020 have highlighted that equally paramount to respecting and protecting the safety of those assembled in protest are practices to safeguard the health and well-being of officers. A comprehensive guidebook published by the National Policing Institute addressing the impact of crowd management events on officer mental and physical health noted:

The last few years have presented unprecedented challenges, both to our communities and to public safety officers and first responders—especially law enforcement. Current events, including COVID-19, political rhetoric and chaos, societal conflict and division, and attacks on the policing institution, individual officers, and officers’ families, have created a challenging environment where stress and trauma increased exponentially. High-stress police operations such as crowd management during periods of civil unrest are mentally and physically demanding. Crowd management often challenges officers to push their bodies beyond normal limits, leading to poor performance, fatigue, insomnia, and injury. In the summer of 2020, many officers repeatedly worked shifts that, at times, exceeded 12 hours, for 10 to 12 days straight, leaving little time for appropriate nutrition, rest, exercise, recovery, or sleep. Large numbers of arrests, long periods on bicycles, standing or moving in formations, or responding to threats are physically and mentally demanding.⁴⁵

Acknowledging the physiological interplay between stress and demeanor, resilience, and performance – including the ability to employ de-escalation tactics and communication strategies – almost all after action reports driving best practices in crowd management following 2020 emphasize the importance of attending equally to the needs of officers.

Recommendations:

- ❖ Ensure that pre-event planning includes regular rotation of officers.
- ❖ Provide respite stations where officers are able to rest, with food and water.

- ❖ Empower all officers to exercise active bystander principles and intervene when they see a fellow officer exhibiting indicators of stress.
- ❖ Provide regular debriefings for officers with mental health practitioners, peer support, and/or chaplains.

5. Local, State, and Federal Initiatives and Support of Good Governance

Without question, some of the police response to the George Floyd protests, followed swiftly by a spate of initiatives pushing to “defund” police departments in favor of reinvestments in community-based alternative responses, has resulted in a spate of legislative efforts around police training, tactics, and equipment. The George Floyd Justice in Policing Act of 2020 (H.R. 7120), for example, was introduced in the House of Representatives with measures aimed at combating excessive force and racial bias in policing. The George Floyd Law Enforcement Trust and Integrity Act of 2021 (H.R. 1570), also proposed in the House, would require national standards around policing practices and accreditation, data-sharing, and would fund a new program to help agencies recruit and hire officers. Several states and the District of Columbia, along with numerous municipalities, enacted laws prohibiting or restricting the use of chemical irritants, projectiles, and sonic weapons at protests.⁴⁶

While we do not disagree with the importance of legislative work, we also urge government action to identify mechanisms to facilitate crowd events in a form that emphasizes and supports what can and should be done rather than restrictions alone. For example, whereas the base of evidence supports the importance of community outreach for informing the police response to crowds both prior to and during events, too often the weight of this work is left exclusively to departments to navigate alone. To this end, we urge a more whole-of-community approach to promoting and incentivizing initiatives consistent with this paper and in line with conceptual principles around good governance, generally.⁴⁷

Recommendations:

- ❖ The Department of Justice, Bureau of Justice Assistance, and states should expand federal and state grant programs to support community engagement, and open funds to non-government organizations to help lead initiatives. Awards should be tied to

- auditing protocols to ensure funding is applied to programs that meet best practice standards and adhere to values of community policing.
- ❖ As part of Consent Decrees implemented in cities where there is deep distrust of police, the Department of Justice should consider, as was done in the recently announced settlement agreement with the City of Springfield, MA, specific requirements relating to community engagement.⁴⁸
 - ❖ As model policies and training around crowd management are revised, to include specific training around crowd psychology and the impact of the police response on crowd dynamics, work that is supported by state and federal grant dollars should incorporate and comport with these policies and training.
 - ❖ The Office of Justice Programs, along with state research centers (such as the California Department of Justice Research Center), should collaborate with academic institutions to validate the efficacy of updated policies and training to ensure the recommendations continue to be grounded in evidence-based practice.
 - ❖ State and local bodies should consider requiring that promotional structures for police commanders include training around current best practice in crowd management.
 - ❖ Local governments should establish processes for sentinel event reviews, in collaboration with both police and community stakeholders, to evaluate points of success and failure.⁴⁹
 - ❖ In advance of and during demonstrations or protest events, local governments/municipalities should work through their emergency operations personnel to ensure that all impacted departments, including those who oversee sanitation, parks, transportation, fire, and emergency medical services, are included in planning and communications apprising of anticipated law enforcement challenges.

V. Additional References

A. Model Policies and Practices

Georgetown Law, Institute for Constitutional Advocacy and Protection. *Protests and Public Safety: A Guide for Citizens and Cities*. <https://constitutionalprotestguide.org/policing-at-protests-best-practices/#operational-considerations>. Accessed April 30, 2022.

International Association of Chiefs of Police (2019). Crowd Management <https://www.theiacp.org/sites/default/files/2020-08/Crowd%20Management%20FULL%20-%20008062020.pdf>. Accessed April 20, 2022.

International Association of Chiefs of Police (2018). Community-Police Engagement: Agency Considerations Checklist for Civil Demonstration Response. https://www.theiacp.org/sites/default/files/2018-07/Final_CPE%20Considerations%20Checklist.pdf?utm_source=Informz&utm_medium=email&utm_campaign=Informz%20Email. Accessed April 29, 2022.

National Institute of Justice (2017). Sentinel Events Initiative Strategic Research and Implementation Plan. <https://www.ojp.gov/pdffiles1/nij/250472.pdf>. Accessed April 20, 2022.

Police Executive Research Forum (2011). Managing Major Events: Best Practices from the Field. https://www.policeforum.org/assets/docs/Critical_Issues_Series/managing%20major%20event%20-%20best%20practices%20from%20the%20field%202011.pdf. Accessed April 20, 2022.

Police Executive Research Forum (2016). Handling Large, Preplanned Events: Recommendations from Preparations for the 2016 National Political Conventions. <https://www.policeforum.org/assets/HandlingLargePreplannedEvents.pdf>. Accessed April 20, 2022.

Police Executive Research Forum (2018). The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned. <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf>. Accessed April 20, 2022.

Police Executive Research Forum (2022). Rethinking the Police Response to Mass Demonstrations: 9 Recommendations. <https://www.policeforum.org/assets/MassDemonstrationsResponse.pdf>. Accessed April 20, 2022.

Seattle Police Department, *Crowd Management, Intervention and Control*. <https://www.seattle.gov/police-manual/title-14---emergency-operations/14090---crowd-management-intervention-and-control>. Accessed April 30, 2022.

B. After Action Reports

Asheville, NC	https://drive.google.com/file/d/1iMOOETz-wPYWIB9LbEDI_1bj8xDsIWQL/view
Columbia, SC	https://www.scribd.com/document/486806209/CPD-Critical-Incidents-Review-2020#fullscreen&from_embed
Columbus, OH	https://glenn.osu.edu/sites/default/files/2021-09/aar-report.pdf
Chicago, IL	https://home.chicagopolice.org/wp-content/uploads/2021/02/AAR_FINAL_2-4-21.pdf
Dallas, TX	https://cbsnews1.cbsistatic.com/i/cbslocal/wp-content/uploads/sites/15909545/2020/08/Final-After-Action-Report-1.pdf
Denver, CO	https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2020GFPReport_OIM.pdf
Iowa City, IA	https://www.oirgroup.com/files/ugd/d85a96_c625e0e677774b658f15a22a10939352.pdf
Kalamazoo, MI	https://www.oirgroup.com/files/ugd/d85a96_557901f4b9214678a72ce89379ab735e.pdf
Los Angeles, CA	https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/1/1/BPC_21-066.pdf
Las Vegas, NV	https://www.lvmpd.com/en-us/Documents/Final%20AAR%20with%20Cover.pdf
Madison, WI	https://www.cityofmadison.com/police/documents/SentinelReport20211116.pdf
Minneapolis, MN	https://lms.minneapolismn.gov/Download/RCAV2/26623/2020-Civil-Unrest-After-Action-Review-Report.pdf
New York, NY	https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf
Oakland, CA	https://www.oaklandca.gov/documents/crowd-control-after-action-report-may-29-2020-to-june-4-2020-1
Omaha, NE	https://www.cityofomaha.org/images/Revised_Public_OPD_Civil_Unrest_Report_10.28.20.pdf
Philadelphia, PA	https://int.nyt.com/data/documenttools/philadelphia-pd/1c9150054a00c064/full.pdf
Portland, OR	https://www.portlandoregon.gov/pcccep/article/783420
Raleigh, NC	https://cityofraleigh0drupal.blob.core.usgovcloudapi.net/drupal-prod/COR23/2020RPDAfterActionReview.pdf
San Jose, CA	https://sanjose.legistar.com/View.ashx?M=F&ID=10534601&GUID=0D5B5719-6345-4C8E-AC9E-DD7392A14948
Santa Monica, CA	https://www.santamonica.gov/Media/CMO/Attachment-11153.pdf
Santa Rosa, CA	https://www.oirgroup.com/files/ugd/d85a96_20e63413c700461b8f1840ea8e5452f1.pdf
Seattle, WA	https://www.seattle.gov/documents/Departments/OIG/Policy/OIGSERWave1Report072221.pdf
Scottsdale, AZ	https://ewscripps.brightspotcdn.com/19/ce/fb7a4a4648f89034afc05fe02efc/2020-civil-unrest-after-action-report-public-release.pdf
Springfield, OR	https://www.springfield-or.gov/wp-content/uploads/2021/03/Independent_Assessment.pdf

C. Legislation Reviewed

BANS CHOKEHOLDS (OR OTHER NECK RESTRAINTS)	RESTRICTS CHOKEHOLDS (OR OTHER NECK RESTRAINTS) TO CIRCUMSTANCES WHEN FATAL FORCE IS JUSTIFIED	RESTRICTS FORCE USED UPON OR SHOOTING AT FLEEING SUSPECTS OR VEHICLES	RESTRICTS USE OF LESS-LETHAL WEAPONS DURING PROTESTS OR ARREST	CHANGES OR CLARIFIES FATAL USE OF FORCE POLICY	REQUIRES USE OF FORCE REPORTING TO THE STATE	REQUIRES USE OF FORCE REPORTING TO THE FEDERAL GOVERNMENT
AZ						HB 2168 (2021)
CT		HB 6004 (2020)			HB 6004 (2020) & HB 6462 (2021)	HB 6004 (2020)
DE		HB 350 (2020)				
IA		HB 2647 (2020)				
IN		HB 1006 (2021)				
MD					SB 71 (2021)	
MN		HF 1 (2020)			HF 1 (2020)	HF 1 (2020)
NH		HB 1645 (2020)				
OR		HB 4203 (2020)		HB 4208 (2020)	HB 4301 (2020)	
VA		HB 5069 (2020)	SB 5030 (2020)	SB 5030 (2020)	SB 5030 (2020)	SB 5030 (2020)
CA	AB 1196 (2020)					
NV	AB 3 (2020)				AB 3 (2020)	
NY	AB 6144 (2020)					AB 10609 (2020)
DC	B 907 (2020)			B 907 (2020) (some bans)	B 907 (2020)	
WA	HB 1054 (2021)		HB 1054 (2021)	HB 1054 (2021)	HB 1310 (2021)	HB 1267 (2021) & SB 5051 (2021)
IL	HB 3653 (2021)		HB 3653 (2021)	HB 3653 (2021)	HB 3653 (2021)	HB 3653 (2021)
UT	HB 5007 (2020)				HB 237 (2021)	
CO	SB 217 (2020)		SB 217 (2020)	SB 217 (2020)	SB 217 (2020)	SB 217 (2020)
VT	SB 219 (2020)				SB 119 (2020)	SB 219 (2020)
MA	SB 2963 (2020)		SB 2963 (2020)	SB 2963 (2020)	SB 2963 (2020)	SB 2963 (2020)

VI. ENDNOTES

¹ See, generally, Major Cities Chiefs Association (October 2022). *Report on the 2020 Protests and Civil Unrest*. <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Report-on-the-2020-Protest-and-Civil-Unrest.pdf>.

² Barker, K., Baker, M. and Watkins, A. In City After City, Police Mishandled Black Lives Matter Protests. *New York Times*, June 28, 2021. <https://www.nytimes.com/2021/03/20/us/protests-policing-george-floyd.html>.

³ Police Executive Research Forum (February 2022). *Rethinking the Police Response to Mass Demonstration: 9 Recommendations*. <https://www.policeforum.org/assets/ResponseMassDemonstrations.pdf>.

⁴ See, e.g., RAND Corporation. *Legitimacy Policing in Depth*. <https://www.rand.org/pubs/tools/TL261/better-policing-toolkit/all-strategies/legitimacy-policing/in-depth.html>.

⁵ U.S. Const. amend. I. See also *De Jonge v. Oregon*, 299 U.S. 353 (1937) (“The right of peaceable assembly is a right cognate to ... free speech and ... is equally fundamental.”).

⁶ See generally Laurence Tribe, *American Constitutional Law*, §12-34 (2nd Ed. 1987).

⁷ Takambou, M.M. US law enforcement is a tale of 2 colors. *Deutsche Welle*. <https://www.dw.com/en/opinion-us-law-enforcement-is-a-tale-of-2-colors/a-56172117>

⁸ *Graham v. Connor*, 490 U.S. 386 (1989)

⁹ Kerner Commission. *Report on the Causes, Events, and Aftermaths of the Civil Disorders of 1967*. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/national-advisory-commission-civil-disorders-report#:~:text=KERNER%20COMMISSION%20REPORT%20ON%20THE,DISCUSSION%20OF%20THE%20SUMMER'S%20DISORDERS.>

¹⁰ In a 1998 paper, for example, sociologist Gary Marx describes a conversation with a high-ranking member of the Chicago Police Department following the violent police response during the 1968 Democratic Convention:

He indicated how unprofessionally the department had behaved. He said that as a commander in a protest situation he is willing to listen, to negotiate, to tolerate minor infractions, and to keep a low profile. He felt strongly that saving lives should be more important than protecting property or symbols. He believed that demonstrations could actively create, rather than undermine, political stability (at least relative to not permitting or responding violently to them). The extensive media coverage of Chicago police attacking protesters was a public relations disaster and such behavior made the police job more difficult. At that time, his views were heretical, and he left the police soon after, but in the decades since they have become widely shared among police leaders both in the United States and beyond.

Marx, G.T. (1998) *Some reflections on the democratic policing of demonstrations*. In Della Porta, D. and Reiter, H. *Policing Protest: The Control of Mass Demonstrations in Western Democracies*. Minneapolis, MN: University of Minnesota Press.

-
- ¹¹ White, B.P. (2000). Walking the Queen's Highway: Peace, Politics, and Parades in Northern Ireland. *San Diego Int'l. L. J.* 1(175).
<https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1280&context=ilj>.
- ¹² Links to best practice recommendations and model policies from both organizations are provided at the end of this document.
- ¹³ Kathleen O'Toole, personal communication; *see also* Berkowitz, K. "Regional Partnerships: The Greater Boston Area's Approach to Large-Scale Security." *The Police Chief* 82 (February 2015): 38-39.
<https://www.policechiefmagazine.org/regional-partnerships-the-greater-boston-areas-approach-to-large-scale-security/>.
- ¹⁴ Stott, C. and Radburn, M. (2020) Understanding crowd conflict: social context, psychology, and policing. *Current Opinion in Psychology*, 35:76-80.
- ¹⁵ Pearson, G. and Stott, C. (2016) *Farewell to the hooligan? Modern developments in football crowd management*. In Frawley, S. and Schulenkorf, N. (eds). *Critical Issues in Global Sport Management*. London: Routledge.
- ¹⁶ *Id.*, 1.
- ¹⁷ Borum, R. (2004) *Psychology of Terrorism*. Tampa: University of South Florida (25).
- ¹⁸ Tajfel, H., Turner, J. C., Austin, W. G., & Worchel, S. (1979). *An Integrative Theory of Intergroup Conflict*. In Austin, W.G. and Worchel, S. (Eds). *The Social Psychology of Intergroup Relations*. Monterey, CA: Brooks/Cole.
- ¹⁹ See generally Stott, C. and Radburn, M. (2020) Understanding crowd conflict: social context, psychology, and policing. *Current Opinion in Psychology*, 35:76-80.
- ²⁰ Swedish National Police Board (2010). *Dialogue Police: Experiences, Observations and Opportunities*.
https://static1.squarespace.com/static/5437a800e4b0137bd4ed4b13/t/594750011b10e3c4c96e684c/1497845774724/Dialogue_bok100630Webb.pdf.
- ²¹ A list of after-action reports reviewed is presented at the end of this report.
- ²² Stott, C. and Kyprianides, A. (2022). *Crowd Psychology, Policing and Interactional Dynamics: Analyzing the Early Stages of the 2020 Protests in the City of Seattle*.
https://www.seattle.gov/documents/Departments/OIG/Other/Final_Crowd_Psychology_Report_v1.pdf.
- ²³ Channing, I. (2021). Protest policing and public perceptions of police. Evidence from a natural experiment in Germany. *Policing: A Journal of Policy and Practice*, 14:4.
[file:///C:/Users/boatirrd/Downloads/Protest%20Policing_OSF%20\(1\).pdf](file:///C:/Users/boatirrd/Downloads/Protest%20Policing_OSF%20(1).pdf).
- ²⁴ See generally Stott, C. and Radburn, M. (2020) Understanding crowd conflict: social context, psychology, and policing. *Current Opinion in Psychology*, 35:76-80.
- ²⁵ See, e.g., Peyton, K., Sierra-Arevalo, M., and Rand, D.G. (2019). A field experience on community policing and police legitimacy. *Proc. Nat. Acad. Sci.* 116:40 (finding that a single instance of positive contact with a uniformed police officer can substantially improve public attitudes toward police, including legitimacy and willingness to co-operate).

²⁶ Bureau of Justice Assistance (1994). *Understanding Community Policing: A Framework for Action*. <https://www.ojp.gov/pdffiles/commmp.pdf>.

²⁷ Lexipol. *Why PDs must open their doors to build community trust*. Podcast: Police1. <https://www.police1.com/policy-transparency-communication-toolkit/articles/why-pds-must-open-their-doors-to-build-community-trust-HZBweiMRwKkPg8CS/>.

²⁸ Major Cities Chiefs Association (October 2022). *Report on the 2020 Protests and Civil Unrest*. <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Report-on-the-2020-Protest-and-Civil-Unrest.pdf>.

²⁹ As one commenter wrote:

The Capitol insurrection is a useful case study to teach all K-12 and higher education students about the multifarious nature of white privilege. People of color cannot violently take over federal buildings, march through them with guns, and destroy property without consequence. A mob of white protesters violently occupying the Capitol is one horrifying exposure of America's racialized double standard, in this instance as it pertains to law enforcement.

Harper, S. The Capitol insurrection was a case study in White Privilege. Teach it that way. *Education Week*, January 5, 2022. <https://www.edweek.org/teaching-learning/opinion-the-u-s-capitol-insurrection-was-a-case-study-in-white-privilege-teach-it-that-way/2022/01>.

³⁰ Consider, e.g., Harte, J. and Ulmer, A. U.S. police trainers with far-right ties are teaching hundreds of cops. *Reuters*, May 6, 2022. <https://www.reuters.com/investigates/special-report/usa-police-extremism/>.

³¹ Stott, C., Pearson, G., and West, O. (2019). Enabling an Evidence Based Approach to Policing Football in the UK. *Policing* 14,(1).

³² Gorringer, H., Stott, C. and Rosie, M. (2012). Dialogue police, decision making, and the management of public order during protest crowd events. *J. Inv. Psych.* 9(2): 111-125; Stott C, Gorringer H (2013). From Sir Robert Peel to PLTs: Adapting to liaison based public order policing in England and Wales. In *The Future of Policing: Papers Prepared for the Steven Independent Commission into the Future of Policing in England and Wales*. Edited by Brown J. Routledge; 2013: 239-251.

³³ Seattle Police Department, email communication dated April 4, 2022.

³⁴ See, e.g., 21CP Solutions (2021). *Media/Law Enforcement Recommendations for the Minnesota Department of Public Safety*. <https://dps.mn.gov/divisions/co/Documents/21CP-mn-dps-report-december-21.pdf>.

³⁵ *Id.*

³⁶ U.S. Department of Justice, Community Oriented Policing Services. *Social Media and Tactical Considerations for Law Enforcement*. <https://cops.usdoj.gov/RIC/Publications/cops-p261-pub.pdf>.

³⁷ Centre for Research and Evidence on Security Threats. *Why Do People Share Disinformation on Social Media?* <https://crestresearch.ac.uk/resources/disinformation-on-social-media/>.

-
- ³⁸ Howell, L. (2013). Digital Wildfires in a Hyperconnected World. WEF Report. https://reports.weforum.org/global-risks-2013/risk-case-1/digital-wildfires-in-a-hyperconnected-world/?doing_wp_cron=1656437313.7420840263366699218750.
- ³⁹ Georgacopoulos, C. and Poche, T. (2020). *Fake News, Disinformation, and the George Floyd Protests*. <https://faculty.lsu.edu/fakenews/about/protestfakenews.php>.
- ⁴⁰ See, e.g., Wood, T. and Porter, E. (2019). The elusive backfire effect: Mass attitudes' steadfast factual adherence. *Political Behavior* 41(1): 135-63. <https://link.springer.com/article/10.1007/s11109-018-9443-y>.
- ⁴¹ Davis, E.F., Alves, A.A., and Sklansky, D.A. (2014). *Social Media and Police Leadership: Lessons from Boston*. Harvard Kennedy School, Program in Criminal Justice Policy and Management. <https://www.ojp.gov/pdffiles1/nij/244760.pdf>.
- ⁴² For an excellent overview of the psychological literature on this point, see Ecker, U.K.H., Lewandowsky, S., Cook, J., Schmid, P., Fazio, L.K., Brashier, N., Kendeou, P., Vraga, E.K., and Amazeen, M.A. (2022). The Psychological Drivers of Misinformation Belief and its Resistance to Correction. *Nature Reviews Psychology* 1:13-29. <https://www.nature.com/articles/s44159-021-00006-y.pdf>.
- ⁴³ Maguire, E.R. (2015). New directions in protest policing. *St. Louis Pub. Law Rev.* 35:1 Article 6. <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1028&context=plr>.
- ⁴⁴ Police Executive Research Forum (2010). *The Police Response to Mass Demonstrations*. <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf>.
- ⁴⁵ National Policing Institute (2021). *Staying healthy in the fray: The impact of crowd management on officers in the context of civil unrest*. Arlington, VA. <https://www.policinginstitute.org/publication/staying-healthy-in-the-fray-the-impact-of-crowd-management-on-officers-in-the-context-of-civil-unrest/>.
- ⁴⁶ See, generally, National Conference of State Legislatures. (2021). *One Year After George Floyd's Death, Work Continues on Policing Policy*. <https://www.ncsl.org/research/civil-and-criminal-justice/a-year-after-death-of-george-floyd-work-continues-on-policing-policy-magazine2021.aspx>.
- ⁴⁷ Like any organization, private or public, police agencies operate within a network of symbiotic relationships, which collectively can inform a dynamic, iterative approach to rethinking organizational practices in response to, or anticipation of, evolving circumstances. Key features of good governance are thus an appreciation for the range and diversity of stakeholders and the interconnectedness between multiple organizations and stakeholder networks, as well as an expectation that policymakers – including police leaders – will routinely collaborate with their networks of stakeholders to drive towards common agendas for institutional practice. Central to such collaboration, in turn, are mechanisms and processes by which stakeholder groups, including citizens, advocacy organizations, and employees, exercise their rights and obligations, and mediate differences with the goal of promoting, supporting, and sustaining good practice. See O'Toole, K. (2018). *The Garda Inspectorate: Driving Collaborative Reform Through a Model of Equilibrated Governance*. Trinity College Dublin, School of Business. <http://www.tara.tcd.ie/bitstream/handle/2262/84982/Thesis%20-%20Final%20Sep%202018.pdf?sequence=1&isAllowed=y>.

⁴⁸ U.S. Department of Justice. *Justice Department Reaches Agreement with City of Springfield to Reform Police Department's Unconstitutional Practices.*

<https://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-springfield-reform-police-department-s>.

⁴⁹ Hollway, J. and Grunwald, B. (2019). Applying Sentinel Event Reviews to Policing. *Faculty Scholarship at Penn Law.*

https://scholarship.law.upenn.edu/faculty_scholarship/2100/?utm_source=scholarship.law.upenn.edu%2Ffaculty_scholarship%2F2100&utm_medium=PDF&utm_campaign=PDFCoverPages.