



FINAL REPORT OF INDEPENDENT REVIEW PANEL

REGARDING THE RESPONSE OF THE INDIANAPOLIS METROPOLITAN POLICE DEPARTMENT TO THE COMMUNITY PROTESTS OF MAY 29-JUNE 1, 2020 IN DOWNTOWN INDIANAPOLIS

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TABLE OF CONTENTS

	Page
1. Introduction	1
2. Summary of Events	3
3. Research	8
4. Findings	13
A. Lack of Planning, Coordination, Communication	13
B. Training Deficit	20
C. Actions of Police Escalated Tensions in the Crowd	24
D. Mutual Misunderstandings Between IMPD and the Civilian Community Contributed to Distrust on the Part of Civilians	32
5. Recommendations	39
6. Conclusion	41

1. INTRODUCTION

In June 2020, Indianapolis Mayor Joseph Hogsett reached out to three members of the Indianapolis community to request that they conduct an independent review of the response of the Indianapolis Metropolitan Police Department (IMPD) to the racial justice protests that took place in our city over the long weekend of May 29 through June 1, 2020.

Those empaneled to conduct the review were Myra C. Selby, former Indiana Supreme Court Associate Justice; Dr. Sean L. Huddleston, President of Martin University; and Deborah J. Daniels, former United States Attorney and U.S. Assistant Attorney General.

The Panel was provided with the full cooperation of IMPD, whose representatives shared various documents and submitted to individual interviews to assist the Panel in piecing together the actions that occurred during the course of the weekend. The documentation included a minute-by-minute accounting of events prepared by a representative of IMPD from IMPD radio transmissions. The Panel interviewed a number of members of IMPD leadership from the Chief of Police on down through the ranks, as well as those from other agencies Panel members thought might shed light on the events of the weekend. The Panel also interviewed the Mayor and top members of his staff, as well as the Marion County Prosecutor and top members of his staff. We greatly appreciated the cooperation and responsiveness of IMPD, the Prosecutor's Office and the Mayor's Office.

In addition to public officials, the Panel interviewed a number of civilians, many but not all of whom were directly involved in the peaceful rallies intended to protest what they perceived as inequity in the administration of justice in Indianapolis and specifically the treatment of people of color by IMPD. Over 50 interviews were conducted by the Panel. We would like to express our gratitude to members of the community who agreed to be interviewed and who provided important and candid eyewitness reports. Several also shared their personal experiences, concerns and suggestions for an improved future.

With assistance from a small team of volunteer attorneys, the Panel reviewed hours of video, some recorded by members of network news media and made available publicly, and some recorded by amateur videographers and shared on social media. The Panel also reviewed research that has been conducted by experts on best practices in policing First Amendment protests.

What follows is what the Panel believes to be an accurate rendition of the occurrences that weekend and lessons learned from the experience that we hope will benefit both law enforcement and the citizens of Indianapolis in future similar situations. The views expressed in this report represent the unanimous views of the three Panel members. The members of the Panel will not make further public comment on the report, preferring that the report speak for itself. No one outside the Panel, including representatives of the Mayor's Office and IMPD, was given editorial control of any kind with respect to the findings and report of the Panel; and the findings of the Panel have not been shared with anyone until now.

The Panel members would like to acknowledge and thank the following individuals, who assisted by reviewing hours of video reflecting the events of the weekend: Roya Porter and Von Lovan of Ice Miller LLP; Rubin Pusha III of Hall Render; Katie Jackson-Lindsay of Jackson Legal Services, P.C.; and Mark Nicholson of the Law Office of Mark Nicholson. The Panel also wishes to express its sincere appreciation to Karen Thorp, Senior Executive Assistant to the President of Martin University, for her critical assistance in coordinating interviews and other meetings of the Panel; and for her assistance in hosting most of those interviews and meetings at Martin University.

2. SUMMARY OF EVENTS

On May 25, 2020, George Floyd was arrested in Minneapolis by police responding to a report that he had used a \$20 counterfeit bill to purchase cigarettes at a convenience store. Nearly everyone in the country has heard the story of what happened next, culminating in a torturous period of over eight minutes during which a police officer knelt on Floyd's neck, suffocating him until he died. The video evidence showed that despite Floyd's repeated expressions that he could not breathe and even after he lost consciousness, the officer did not remove his knee – including for nearly a minute and a half after paramedics arrived on the scene.

By that weekend, it was clear that Floyd's tragic and inexcusable death at the hands of police had sparked long-pent-up anger and consternation, leading to marches for racial justice in cities throughout the country. Indianapolis was no exception; and this community was already in turmoil based on the shooting less than three weeks earlier of Dresjean Reed by a police officer after a high-speed chase. Emotions surrounding the Reed shooting were still high during the week of May 25, and the amount of information available to the public about the details of the shooting was at that point minimal.¹

On the afternoon of Friday, May 29, a relatively small group of people gathered on Monument Circle to protest what they perceived to be police misconduct and bias against people of color in policing. While the George Floyd killing immediately precipitated the demonstration, in Indianapolis it was also very much a continuation of protests that had begun in early May and continued all month in relation to the shooting of Dresjean Reed. It is extremely important to bear in mind that this fateful weekend happened in the midst of the raging COVID-19 pandemic. City agencies including IMPD were dealing with the real challenges of the public health crisis and the strain on operations, morale and staffing. The City of Indianapolis was already dealing with an unprecedented challenge and this undoubtedly affected IMPD's ability to respond to protests and crowds. Several witnesses suggested that many months of sheltering in place due to the pandemic may also have contributed to the size of the crowds. The Indianapolis Metropolitan Police Department (IMPD) had some idea that there would be demonstrations in Downtown Indianapolis on the weekend of May 29. Members of the Event Response Group (ERG) were notified that they should be prepared to respond.

The ERG is composed of officers with routine assignments throughout the department but with specialized training in crowd control measures. About 200 officers are so trained. The ERG is normally used for crowd control at events such as the Indianapolis 500 Mile Race, Indianapolis Colts games, and Indiana Black Expo. ERG members were deployed to Monument Circle around mid-afternoon, when the number of marchers was perhaps about 50.

As the afternoon turned into early evening, the number of protesters grew. Confrontations began to occur between IMPD members and protesters. By about 6:00 p.m., tensions were high as

¹ A special prosecutor was later appointed to present the matter to a grand jury, and the Indiana State Police conducted an exhaustive investigation culminating in a determination by the grand jury that no indictment of the officer was warranted based on the evidence. The Indiana State Police presented the evidence in the case in a lengthy news conference on November 10, 2020. See <https://www.youtube.com/watch?v=qIB-IC4A3pM>.

police and protesters faced off, at one point standing literally face to face within one or two feet of each other at the inner rim of the Circle (the area inside the street section and surrounding the monument itself). While officers assigned to patrol Downtown were wearing their normal uniforms, members of the ERG were outfitted with tactical gear including reinforced vests, helmets and batons. The combination of the proximity of these officers to the protesters and their attire, in what protesters termed and what is often referred to in lay terms as “riot gear”, raised the temperature of the crowd significantly.

Assistant Chief Chris Bailey, seeing the increasing tension, called for officers to fall back, and they retreated to the outer sidewalk on the outside of the bricked street, positioning themselves in front of the businesses in the northwest quadrant of the Circle. Tensions remained high, and then-Deputy Mayor David Hampton walked to the inner rim of the Circle to talk with members of Indy10 Black Lives Matter, who were attempting to keep the protest organized and orderly. Hampton, who had long served as a liaison to the community and knew several of the organizers, asked these organizers what would help calm the growing crowd. They suggested that if the police were to step back to a mid-point in the north spoke of the Circle (Meridian Street, at a mid-point between Monument Circle and Ohio Street), that might ease tensions. Hampton reported this to Assistant Chief Bailey, who then made the call for officers to move back to that location. Officers were still clad in “riot gear” but did move to the north spoke; patrol cars were eventually removed from the Circle and positioned just north of that location.

One difficulty encountered by police in seeking to communicate with the crowds was that while certain organizations such as Indy10 Black Lives Matter were present and seeking to provide direction to those assembled, as the crowds grew it became impossible for any individual or organized group to speak for members of the crowd or determine what actions by police might be effective to maintain peace.

By about 8:20 p.m., according to internal police records, the IMPD command center ordered officers to close off all spokes to (streets leading into) Monument Circle, seeking to close it to pedestrians as well as vehicle traffic. As the crowd continued to grow far beyond what IMPD had anticipated, it spread to various parts of Downtown.

Several members of IMPD leadership made it clear that they had not previously, at any time in their careers, experienced either the size or the emotional level of the now-sizeable crowd. It appeared that many people had come Downtown who were not affiliated with Indy10 Black Lives Matter or any other group, likely responding to social media posts and media reports of the growing crowd. While there were rumors of a significant presence by outside activists, the examination conducted by the Panel, including the questioning of police witnesses, suggested that while some people at the march were from outside Indianapolis, most of those were from Indiana and had not come from other states. While there were in fact representatives or adherents of various activist groups present, there did not appear to be a significant presence on the part of any outside organized group or a large contingent of antifa – people influenced by an anti-fascist philosophy who often demonstrate against white supremacist organizations. See below for additional information. Rumors among IMPD officers and others that a large contingent of people similarly dressed in dark clothing and carrying backpacks left the Indianapolis International Airport on Sunday together were definitively disproved by a review of

Transportation Security Administration (TSA) videotape by airport personnel. Similarly, rumors that local homeless camps swelled between Friday and Sunday (suggesting a sizeable out-of-town contingent) were deemed groundless by police officers in a position to know. Police witnesses also expressed that, based on the arrests they made, they were surprised that so few were from outside Central Indiana.

More officers were called in, including members of the ERG grenadier squad. While all officers are equipped with small canisters of gas and ERG members are also equipped with small CS gas foggers and “pepper balls” – small projectiles fired with guns and containing gas that are intended for close and targeted contact – the grenadiers are the only officers permitted to use 37 mm launchers to launch CS gas canisters that will affect larger areas. Individual officers typically are given the discretion to deploy pepper balls, foggers and the small gas canisters worn on their belts as they deem necessary.

It was explained by IMPD leadership and grenadiers that the 37mm CS gas launchers not only affect larger areas but also harder to control; the gas cannot be targeted toward specific individuals who are being disruptive or engaging in misconduct but will affect a wide swath of people depending on the direction of the wind. In addition, it was explained to the Panel by police leadership that no one currently on the force had ever before encountered a situation in which gas was deployed against the public. The grenadiers had never fired their 37mm launchers except in training, and according to IMPD leadership also had no experience in assessing situations and determining what level of force might be needed.

The crowd, by now numbering in the hundreds, began to march in various directions: west from the Circle toward Capitol Avenue; south to Washington Street; north to Ohio Street; and east to Alabama Street. Eventually, at 8:00 p.m. according to IMPD internal records, officers began deploying CS gas at Alabama and Market Streets while individual officers deployed pepper balls in an effort to control the crowd and/or induce those congregating to disperse. This was highly upsetting to everyone in the crowd, most of whom were not engaging in illegal activity of any kind though they were vociferous and disinclined to be restricted to any geographic area of the Downtown despite efforts of IMPD officers to contain the protests. Included in the crowd of peaceful protesters were children, even infants, whose parents had not anticipated this kind of response from police and many of whom had brought their children with them – not unusual for peaceful demonstrations. The children, too, were affected by the uncontrolled gas.

As recorded on video and publicly reported by representatives of the news media, as well as reflected in IMPD internal records, it was only after officers began deploying gas that the crowd began to engage in property damage. It appears clear that the emotions of the crowd were heightened by the use of the gas: the actions of the police in deploying gas, seemingly indiscriminately, against the crowd, escalated the tensions. Even television reporters there to observe and report on the demonstrations were affected by the gas.

Another act on the part of police that escalated tensions among the crowd was the confiscation of what protesters deemed “medical supplies” – water, first aid equipment and the like that was staged at specific locations by participants serving as “medics” in order to help anyone who might be injured in any way in the course of the protests. Such injury might range from heat

stroke to being impacted by tear gas to deliberately or inadvertently inflicted physical harm. Members of IMPD willingly admitted that they confiscated the supplies. Explanations ranged from claims that the materials had been abandoned by their owners to concerns about the intentions of people who would prepare for potential injury in such a way.

Video evidence clearly demonstrates that the Indy 10 Black Lives matter organizers as well as others in the crowd who were there to engage in peaceful protest sought to dissuade others from violence; but as tempers soared and certain individuals not present for purposes of peaceful protest began to commit acts of vandalism, the situation spiraled out of control.

By about 10:00 p.m. on the night of May 29, those who had tried to organize a peaceful demonstration that evening called for marchers to go home and come back the next day. Many people did leave at that time, but those prone to violence and disruption stayed for several hours, becoming more violent as the night wore on.

It was generally agreed by police, protesters and observers that there were three or four different types of people in the Downtown area that evening: those marching peacefully for racial equity and exercising their First Amendment rights; those with a legitimate interest in being a part of history who came downtown to observe and participate in the peaceful protest; those engaged in nefarious activity and opportunists who saw a chance to engage in vandalism and looting; and outside activists. The activists included local right-wing groups armed with long guns who said they were Downtown to “protect the monuments” as well as those apparently influenced by “antifa” (an anti-fascist philosophy) and wearing dark clothing and backpacks, some armed with leaf-blowers in anticipation of gas attacks. However, neither was represented in large numbers among the crowds.

IMPD leadership readily admitted that they had not anticipated crowds of this size and were unprepared for what they faced. This report will show that the size of the crowds and IMPD’s lack of preparation for the type of demonstration that occurred, coupled with a lack of appropriate training to deal with the facilitation of peaceful First Amendment protests as opposed to simple crowd control, as well as the fact that these protesters were protesting the police themselves, contributed to nothing short of a conflagration and significant property damage to the Downtown area.

The highly charged atmosphere resumed on Saturday, May 30, when the crowds returned to Downtown and grew even larger and more violent. There were clearly people who came Downtown on Saturday night bent on violence: there were several reports of shots fired, and the Panel talked to police witnesses who came very close to being struck by bullets fired by some in the crowd. By this time, even those who came Downtown to engage in peaceful protest seemed to turn against the police, though they did not necessarily engage in violence themselves. This report will describe how various aspects of the police response, intended to control and contain the actions of the marchers, only served to frighten and enrage the crowds, and more violence, vandalism and looting ensued.

By Sunday, May 31, IMPD leadership told the Panel, they began to change their tactics to be less confrontational and more facilitating of legitimate First Amendment protest. For example, they

reduced the visibility of the ERG members and anyone clad in tactical gear, and they decided not to try to interfere with the marching as opposed to the attempts to contain it on Friday and Saturday evenings. This did seem to make a positive difference, and multiple members of IMPD leadership told the Panel that in retrospect they believe they should have handled Friday and Saturday night differently; though some individual officers held the view that when IMPD officers became more forceful on Sunday, things calmed down. The Panel members disagree that it was a more forceful approach that led to de-escalation of tensions on Sunday, based in part on research into best practices and in part on the statements of IMPD leadership that suggest that their changes in tactics were in conformity with the research findings.

By Monday, June 1, tensions had calmed considerably. While representatives of the organized groups that normally convene such protest marches had mixed feelings at best about the well-publicized march up Meridian Street toward the Governor's Residence, not led by them, that culminated in an IMPD officer hugging a protester, that incident demonstrated that a sympathetic approach to those engaging in legitimate protest tends to lead to a more positive and peaceful conclusion than a more confrontational approach. Indeed, it appears that the IMPD sergeant who de-escalated that situation changed a potentially dangerous situation to a peaceful one.

The following sections of the report will outline the Panel's assessment of the series of events over the weekend of May 29 – June 1, 2020 and make research-based recommendations to IMPD to improve the outcomes of future First Amendment based protests.

3. RESEARCH

Research on the interactions between law enforcement officers and protesters dates back over 50 years. Between 1967 and 1976, three federal commissions were appointed by U.S. presidents to investigate public protests and riots in the United States. The *National Advisory Commission on Civil Disorders* (popularly known as the *Kerner Commission*) was established in July 1967 after the riots that occurred in Newark, New Jersey, and Detroit, Michigan. The *National Commission on the Causes and Prevention of Violence* (the *Eisenhower Commission*), established in June 1968 in response to protests following the assassination of Dr. Martin Luther King, Jr., followed the *Kerner Commission* report. The *President's Commission on Campus Unrest* (the *Scranton Commission*) was the final investigative study of that era, established in May 1976 in response to the increasing number of violent protests that were occurring on college campuses around the country. All three commissions concluded that when police respond by escalating force through actions such as arriving in riot gear, use of military-style weapons, deploying tear gas, and making mass arrests to control the actions of protesters, those actions ultimately lead to the same violence these efforts are intended to prevent.² Later research on the escalation of violence during protests would further support these findings. Thus, researchers assert that escalating force creates “feedback loops.” The presentation and controlling actions of police can cause protesters to escalate their reaction against them, with police escalating even further in response, causing each group to become increasingly fearful and enraged.³

In order to analyze the response of IMPD to the May 29-June 1 protests, the Panel reviewed literature on best practices in policing. The leading authoritative work on this subject is generally acknowledged to be a report by Edward R. Maguire, a professor in the School of Criminology and Criminal Justice at Arizona State University and associate director of its Center for Violence Prevention and Community Safety; and Megan Oakley, a research specialist at the Center for Violence Prevention and Community Safety at Arizona State University. Their seminal work, *Policing Protests: Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police*⁴, is cited in other studies of policing such as the report of the New York City Department of Investigation on its review of the response of the New York Police Department to the protests that occurred in New York in the wake of the George Floyd killing.⁵

The Maguire & Oakley report is based on extensive interviews and evaluations of more than two dozen police departments around the country, survey research on participants in the Occupy

² Marx, Gary T. *Policing Protest: The Control of Mass Demonstrations in Western Democracies*. Edited by Donatella della Porta and Herbert Reiter, NED- New edition ed., vol. 6, University of Minnesota Press, 1998.

³ <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1028&context=plr>

⁴ *Policing Protests: Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police*, January 2020, by Edward R. Maguire and Megan Oakley, funded by the U.S Department of Justice, Office of Community Oriented Policing and published by The Harry Frank Guggenheim Foundation, a available at <https://www.hfg.org/Policing%20Protests.pdf>.

⁵ *Investigation into NYPD Response to George Floyd Protests*, issued by the New York City Department of Investigation in December 2020; see <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>.

protests in a number of different cities, and a comprehensive assessment of the academic and research literature on crowd psychology and policing.

Maguire and Oakley begin with a brief history of policing in the United States, describing the strategies for policing protests in the 1960s which it indicates were often “based on the *escalated force* model, which operated on the assumption that a sufficiently dominant show of force by police would encourage protesters to back down and comply with their directives.”⁶ However, the authors describe in their study why this type of approach is in fact not helpful in controlling crowds. Citing the Kerner Commission, the Eisenhower Commission, and the Scranton Commission, Maguire and Oakley conclude that “[h]istory has taught us that the premature or ill-advised use of force against protesters, particularly the use of riot control techniques, sometimes has the effect of amplifying conflict with protesters and making things worse rather than better.”⁷ They describe a body of research demonstrating that “when people perceive the law or legal authorities as illegitimate, abusive, or unfair, they are more likely to rebel and become defiant.”⁸

Citing John Drury and Steve Reicher, *Collective Psychological Empowerment as a Model of Social Change: Researching Crowds and Power*⁹, Maguire and Oakley propose that when members of crowds who see themselves as engaging in legitimate activity perceive the police as “engaging in indiscriminate and illegitimate enforcement actions”, the crowd will start reacting against the police – adding, “[f]urthermore, those who viewed themselves initially as moderates may come to reconsider their views of the police [and] . . . may begin to identify with the radicals to a much greater extent than they did before.” Those who see themselves as law-abiding thus are likely to engage in anti-police activities in which they otherwise would not have engaged.

The New York City Department of Investigation report indicated that internal messaging is critically important. It declared that the New York Police Department’s stated values – defending First Amendment expression – should be reinforced in instructions given to officers who will be responsible for policing a First Amendment based protest. The report cited a 2018 publication of the Police Executive Research Forum (PERF), a leading proponent of policing best practices, which suggests that police use of force and use of riot control equipment should be measured. The authors note that police should “respond to a mass demonstration in gear and with equipment that is proportional to the mood of the crowd.”¹⁰ They posit that tension is increased when responding officers arrive in more gear and with more equipment than are necessary during their initial contact with the crowd. The authors advise that police should “begin with the lowest response level and be prepared to change if conditions change.” Further, the 2018 PERF study emphasized the importance of ensuring that “all officers understand that their role is to facilitate demonstrators’ First Amendment rights while protecting public safety. In addition, the police

⁶ Maguire and Oakley, page 25.

⁷ *Id.*, page 26.

⁸ *Id.*, page 46.

⁹ John Drury and Steve Reicher, “Collective Psychological Empowerment as a Model of Social Change: Researching Crowds and Power”, *Journal of Social Issues* 65, no. 4 (December 2009).

¹⁰ Police Executive Research Forum. 2018. *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services.

should also convey this message to the public so community members know that police officers understand their role.”¹¹

Maguire and Oakley suggest:

If the goal is genuinely to keep the peace and prevent conflict, dressing officers in riot gear and shutting down dialogue between protesters and the police is very likely to fail. Unless there are compelling reasons to deploy officers in riot gear, officers should be wearing soft uniforms and engaging in dialogue meant to keep lines of communication open and prevent unnecessary conflict. If police are concerned about the possibility of violence, they can adopt a graded response in which officers in riot gear are staged out of sight in a nearby location where they can be deployed quickly. Staging officers in riot gear in full view of a peaceful crowd is a flawed strategy that is based on outdated principles from crowd psychology. It is a classic example of a strategy that is likely to generate unintended consequences, in this case potentially stimulating the very conflict it is intended to prevent.¹²

As indicated in other sections of this report, the actions of IMPD officers were not dissimilar to what appears to have occurred in cities around the country. In fact, the New York City Department of Investigation (NYC/DOI) report regarding the NYPD response to protests at the same point in time and inspired by the same emotions found similar actions on the part of NYPD. The NYC/DOI concluded that these actions escalated rather than de-escalated the tensions within the crowd and undermined public confidence in the NYPD’s approach to protecting citizens’ right to protest.¹³ The report concluded that “NYPD use of force and crowd control tactics often failed to discriminate between lawful, peaceful protesters and unlawful actors, and contributed to the perception that officers were exercising force in some cases beyond what was necessary under the circumstances.”¹⁴

The NYC/DOI report also made the point that the NYPD officers lacked sufficient training in policing protests and that NYPD training currently is “heavily focused on disorder control methods, without a sufficient community affairs or de-escalation component.”¹⁵ Citing Maguire and Oakley, the report indicated:

Police choices in handling protests can have far-reaching effects. Research shows that when citizens view police officers using fair and respectful procedures, they are more likely to support and cooperate with the police, comply with their directives, and obey the law. When a police officer is seen as unnecessarily impatient, rude, brutal, or otherwise unfair in dealing with a protester, people are more likely to view the police (and the law more generally) as illegitimate.¹⁶

¹¹ *Id.* at 1.

¹² Maguire & Oakley at 55.

¹³ *Investigation into NYPD Response to George Floyd Protests*, Footnote 5, *supra* at page 8.

¹⁴ *Ibid.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 30-31, citing Maguire & Oakley at 9-10.

Maguire and Oakley in turn cite favorably the 2014 Task Force on 21st Century Policing established by President Obama and chaired by policing experts including Charles Ramsey, former Chief of the Washington, DC Police Department and Commissioner of the Philadelphia Police Department. That task force, in its final report, described its policing philosophy in this way: “to build trust between citizens and their peace officers so that all components of a community are treating one another fairly and justly and are invested in maintaining public safety in an atmosphere of mutual respect.”¹⁷

The task force’s recommendations included this:

Law enforcement agencies should create policies and procedures for policing mass demonstrations that employ a continuum of managed tactical resources that are designed to minimize the appearance of a military operation and avoid using provocative tactics and equipment that undermine civilian trust.¹⁸

The report of the task force, in making this recommendation, said that mass demonstrations “are occasions where evidence-based practices successfully applied can make the difference between a peaceful demonstration and a riot.”¹⁹

Maguire and Oakley, in describing the work of the task force, cited its suggestion that law enforcement agencies adopt a “guardian mindset” as opposed to a “warrior mindset” and place a priority on de-escalation. Such an approach would include using “soft look” uniforms and maintaining open postures.²⁰ Maguire himself was quoted by the task force as saying that “when officers line up in a military formation while wearing full protective gear, their visual appearance may have a dramatic influence on how the crowd perceives them and how the event ends.”²¹

Maguire and Oakley add that “Staging officers in riot gear in full view of a peaceful crowd is a flawed strategy that is based on outdated principles from crowd psychology. It is a classic example of a strategy that is likely to generate unintended consequences, in this case potentially stimulating the very conflict it is intended to prevent.”²² They recommend against viewing crowds as homogeneous, imposing sanctions on all based on the actions of a few, as seems to have occurred here. They suggest that police must differentiate between those peacefully exercising their First Amendment rights and the opportunists who use these large public gatherings as an excuse to act criminally. In this way, police can facilitate peaceful protest while focusing enforcement action against those actually committing criminal acts such as vandalizing and looting:

When police behave in an overly aggressive and unreasonable manner toward a whole crowd based on the actions of a few of its members, they inadvertently set in motion a

¹⁷ Maguire & Oakley at 36, citing *Final Report of the President’s Task Force on 21st Century Policing* (Washington, D.C., Office of Community Oriented Policing Services, 2015),

http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf at 5.

¹⁸ *Final Report of the President’s Task Force on 21st Century Policing* at 25.

¹⁹ *Ibid.*

²⁰ Maguire & Oakley at 36.

²¹ *Final Report of the President’s Task Force on 21st Century Policing* at 25.

²² Maguire & Oakley at 55.

self-fulfilling prophecy in which the moderate members of the crowd begin to side with the more extreme or radical members against the police. A more strategically sound approach is for police to focus their enforcement actions on only those whose violent, destructive, or otherwise illegal conduct requires immediate attention.²³

²³ *Ibid.*

4. FINDINGS

A. Lack of Planning, Coordination, Communication

Background

The National Incident Management System (NIMS) was developed in the years following the terrorist attacks of September 11, 2001 and is managed and maintained by the Federal Emergency Management Agency (FEMA). A document published by FEMA entitled “National Incident Management System, Third Edition (2017)” describes the NIMS as a system that “provides a consistent nationwide template to enable partners across the Nation to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity.”²⁴

The NIMS is intended to assist agencies involved with public health and safety, along with other governmental and nongovernmental agencies and the private sector, to work in a coordinated and comprehensive fashion together to address all types of incidents. It identifies standardized practices and is designed to foster cohesion among agencies and assist them in addressing in a strategic fashion any type of incident that might arise. It includes an Incident Command System (ICS) model, allowing the agencies clearly to identify the structure of command for a given event or incident; and calls for an Incident Action Plan (IAP) that should be prepared, if possible, in advance of an anticipated event or incident and updated regularly as the event or incident unfolds.

IMPD adopted the NIMS approach some years ago. In addition, in the wake of a few days of unrest in Indianapolis in 1995 in the area of 38th Street and College Avenue that caught the police off guard, it developed an Event Response Group (ERG). The ERG is a group of officers who have other routine assignments but who are specially trained to work in teams to manage large events. Those events tend to be in the nature of the Indianapolis 500-Mile Race, the Indiana State Fair, Indianapolis Colts games, and the like; the focus of the ERG in those types of events is on crowd control and the purpose of the ERG, according to IMPD leaders we interviewed, is to “keep the peace”, using something of a “field force” approach.

The ERG is a subset of IMPD’s “Mobile Field Force” (MFF). The ERG is trained to work as a team and brought in to help manage large-scale events that may require the use of crowd control tactics. (See additional information on IMPD’s ERG on page 24.) The FEMA document describing MFF officers reads as follows:

[A Mobile Field Force Officer] possesses multidisciplinary skills to perform patrol and fixed-site functions, including:

- a. Crowd management and crowd control

²⁴ https://www.fema.gov/media-library-data/1508151197225-ced8c60378c3936adb92c1a3ee6f6564/FINAL_NIMS_2017.pdf

- b. Saturation patrols
- c. Staffing traffic control points
- d. Security of critical facilities
- e. Deployment of chemical agents and munitions
- f. Responding to calls for service
- g. Maintaining order and preserving the peace
- h. Arresting law violators
- i. Promoting traffic safety and enforcing vehicle and traffic laws
- j. Area search
- k. Perimeter control
- l. Demonstrator and protestor escort
- m. Prisoner control and transport²⁵

Clearly, the training of the MFF officers is in the use of specific tactics to maintain order. Some 250 IMPD officers receive MFF training. The ERG officers receive additional training specific to the ERG function, but it, too, seems to be focused on crowd control tactics. Approximately 200 members of the IMPD force are trained for ERG service.

The Panel was told by representatives of IMPD leadership that the standard operating procedure utilized for all events provides general guidance but is deliberately not specific; and that the same type of “field force” approach employed with respect to the late May protest marches was used in the 1990s to deal with Ku Klux Klan rallies – including police equipped with tactical gear prepared to deal with potential violence. One police witness referred to the approach used in 1994 to deal with civil unrest here in Indianapolis, calling it the “Miami ‘romp and stomp’” approach. The “Miami model” is addressed in the section of this report entitled “Research.”

Lack of Strategic Incident Action Plan

Multiple IMPD witnesses indicated that no specific Incident Action Plan (IAP), recommended by NIMS procedures, is generally employed by IMPD for events such as protests or demonstrations. In the case of the late May demonstrations, that proved to be the case. A roster of officers was prepared, indicating who would be on duty and who the supervisors would be; but no strategy was articulated nor specific objectives stated, other than generally “keep the peace”; “protect lives and property”; and/or “protect the Constitutional rights of the protesters”.

The Panel consulted with the Police Executive Research Forum (PERF), a national police standards and practices organization in Washington, DC focused on modern policing and whose work is cited in the Research section of this report, about how police departments should use the IAP to prepare officers for major events. The Panel was told that the IAP should be fluid, updated every 12 hours during an event and distributed as broadly as possible to all personnel who will be responding. It should describe not only the command structure, but also specifics to the degree possible about what is expected to occur/what is developing; and what the strategic objectives of the agency will be. Objectives may include such things as:

²⁵ https://www.fema.gov/media-library-data/1516995347193-c1e141cf05df851b0338cfb5584ea203/NIMS_509_6_MFFOfficer.PDF

- What will the arrest philosophy be? (e.g., we will make arrests only for significant property damage or person-on-person violence)
- What should you let go without arrest? (e.g., random water bottle throwing)
- What are the rules with regard to a curfew, if one is employed?
 - Will you issue citations rather than arrest?
 - If making an arrest, what is the approach you should use?
 - Outline approach: always use arrest teams; notify supervisor; etc.
 - To whom should officers report with respect to arrests?

The IAP, according to PERF, should be used to give officers specific direction on what they should be doing. Use of a blanket statement such as “protecting property and constitutional rights” is too high-level and should be merely a point of departure in any situation. It is not in and of itself a strategic objective.

Other law enforcement experts who have studied the use of IAPs describe them as a way to “create all-encompassing objectives, strategies and tactics, and communicate assignments in a standardized way.”²⁶

IMPD had no IAP in place at all with relation to the late May-early June protests until June 6, over a week after the protests began on Friday, May 29; and even when the agency created an IAP, it did not include specific objectives or any kind of strategic approach. IMPD’s reaction through the weekend, in particular on Friday and Saturday (May 29-30), appeared to be reactive rather than proactive, tactical rather than strategic.

Based on after-the-fact interviews conducted by the Panel, there was agreement on the part of IMPD leadership that initially, on the afternoon of May 29, officers should use a “soft” approach (regular “soft” uniforms without protective vests or helmets), and a belief that this is what had happened. However, as indicated elsewhere in this report, while some officers appeared in normal, nonthreatening patrol attire, other officers wearing helmets and protective vests were staged in full view of the crowds, thus leaving the impression that they were prepared for violence. The failure of IMPD to develop a strategic plan focused on de-escalation, coupled with other factors discussed below, likely contributed to continuing escalation of tensions between police and marchers during the course of Friday evening and again on Saturday.

IMPD leadership interviewed by the Panel also understood the need to always leave a means of egress for those who are protesting – not to ever leave them with the impression that they are blocked in with no means of exit, as this can lead to crowd panic. However, on at least two occasions that occurred during the course of the weekend, protesters felt that they had no means of escape from police; they felt that they were surrounded. It appears that while leadership had something of an understanding of what should and should not happen, the rank and file did not fully share that understanding.

²⁶ “Why Law Enforcement Needs an Incident Management Plan for Every Event”, published online in Police1 by Lexipol, June 11, 2018; authored by Lt. W. Michael Phibbs, researcher and 25-year law enforcement veteran specializing in incident management, with a Master’s degree and PHR certification in human resources.

This reliance on what had worked in the past for other types of public events, including public protests, was not surprising. Indianapolis has a history of peaceful protests when there are protests at all; unlike cities such as Seattle, which has experienced violent protest incidents over the years prior to and including the Occupy movement beginning in 2011, Indianapolis law enforcement officers are accustomed to being able to talk to protest organizers in advance, generally agree on the terms and parameters of a protest event, and avoid violence. But there were significant differences here.

First, the protests drew out a much larger crowd than any prior gathering. Many or even most of those who came downtown after learning that people would be gathering were not affiliated with any groups that IMPD was accustomed to working with, nor did they necessarily respond to the efforts of those groups to exercise leadership/control. More importantly, the nature of this protest was different. The subject was specifically the conduct of the police themselves; thus, the crowd was not inclined to be “managed” or “controlled” by the police.

There was ample evidence prior to May 29 that unrest related to racial justice was developing, both in Indianapolis and around the country. While the killing of George Floyd in Minneapolis on May 25, 2020 triggered protests throughout the country, Indianapolis was already on edge following the death of Dreasjon Reed at the hands of police on May 6, 2020. Some details of the confrontation that culminated in the shooting were not immediately known or shared by IMPD²⁷; or, to the extent that information was shared, the source (IMPD) was not trusted by members of the community. See the section of this report entitled “Mutual Misunderstandings Between IMPD and the Civilian Community Contributed to Distrust on the Part of Civilians”. Thus, unrest grew through the month. Indianapolis, in short, was ripe for robust protest.

While some in IMPD leadership indicated that they had intelligence earlier in the week of May 25 that something would occur over the weekend, based on interviews of IMPD leadership it seems little if any actual planning took place. In addition to the lack of a strategic plan (see above), there were multiple communications issues that caused difficulties in responding in a coordinated fashion focused on de-escalating tension.

Internal Communication Was Lacking

There was insufficient communication within IMPD. No clear instruction was given to those in the field, and the Panel was told that even within the ERG only the “alphas” – the leaders in charge of each squad – received briefings prior to each day’s events. Experts at the Police Executive Research Forum indicate that everyone responding needs to be briefed in some way. If they cannot all attend a single, large briefing, then supervisors, once briefed, should go out to the field and reiterate the briefing to the officers who will be responsible for responding. The New York Police Department maintains departmental cell phones and uses a mobile application (“app”) to distribute specific plans and instructions to everyone in the field.

²⁷ The Panel members are not necessarily criticizing IMPD for not having been able to share information with the public before an investigation was conducted. This is simply a fact that contributed to citizen unrest that built up through the month of May.

IMPD leadership seems to understand that drawing a hard line in the sand and taking a confrontational approach does not work well for events like these and can lead to inadvertent and undesirable escalation of an already tense atmosphere. In our interviews with them, the leadership seemed to think that officers were in fact taking a “soft” approach. However, street officers – particularly those called in as force multipliers after events began to spiral out of control – were apparently not given much instruction other than to come downtown and maintain order.

The primary instruction to officers who were on call for potential force multiplier deployment was “be ready”. This was insufficient: according to police witnesses, it was interpreted by officers to mean “be sure you have child care and other arrangements made so that you can come downtown on short notice.” In retrospect, some in IMPD leadership indicated that front-line officers have trouble seeing the big picture; they are dealing with what is right in front of them. Some members of IMPD leadership indicated that they probably should have had more “white shirts” (upper-level supervisory personnel) on the street rather than stationing most of them at the Command Center, in order to provide direction to the front-line officers who instead were generally left to make tactical decisions on their own in a chaotic situation.

In addition to the ERG and MFF, IMPD has a Special Events Team (SET). Some members of that team were on duty Saturday night (May 30), but when their shift ended they were sent home. Other members of the SET offered to come downtown but were told they were not needed.

Finally, as the crowd continued to grow, at some point a “calling all cars” order was issued, bringing many additional officers downtown who were given no instruction other than to get downtown and help keep the peace. Those officers had no choice but to manage as best they could, relying on their instincts rather than training or specific orders to handle the increasingly hostile crowds.

At a later point in this section, the report discusses the concern of those in the community that they did not hear empathy expressed by IMPD. It should also be mentioned that members of the IMPD force felt that more support should have been expressed for them as they sought to perform their roles in a very difficult situation. Improved communication from leadership would likely have made a positive difference here.

Command Center Choices Did Not Contribute to Communication, Coordination

When the protesters began to gather on Monument Circle on the afternoon of May 29, and as the crowds grew in the ensuing hours, IMPD thought it sufficient to establish a command center (the location where leadership receives reports of developments and manages and directs the police response) outside the City-County Building on East Market Street. There was no way, given that location, to make use of available cameras around the downtown area or have a central location for incoming information in order to monitor developments. At that early point, however, it was not known that the crowd would grow to the proportions it did, or just how high tensions were.

After that first night, the command center was moved to the Indianapolis Fire Department Headquarters on Ft. Wayne Avenue – a building that does not have a view of what is occurring

and, again, no access to cameras around the downtown. Finally, the command center was moved to the Regional Operations Center (ROC) on Shadeland Avenue. This provided more of an opportunity to monitor ongoing developments and manage a coordinated response; however, the Panel was told by IMPD witnesses that there were too many people present in the command center to engage in organized control of policing operations.

Insufficient Inter-Agency Communication

There seems to have been minimal coordination between IMPD and the Marion County Prosecutor's Office (MCPO). Police witnesses indicated that they sought guidance on arrest/charging policy from MCPO, but representatives of MCPO indicated that they felt their only appropriate role was to provide IMPD with what state law required, for example the definition of the term "unlawful assembly". There does not seem to have been a clear understanding on the part of IMPD officers what would and would not be prosecuted by MCPO. Not surprisingly, the two agencies ended up acting somewhat at cross purposes. For example, IMPD officers made many arrests on Friday, Saturday and Sunday (May 29-31) seemingly without knowing what the charging philosophy of the prosecutor would be. Only on Monday, June 1, did they find out when the prosecutor held a news conference announcing the types of cases he would and would not charge criminally. Specifically, he indicated in that news conference that curfew violations, without additional criminal activity, would not be prosecuted.

Based on interviews conducted by the Panel, it appears that virtually no planning occurred between the two agencies prior to the events of that weekend. Further, there appears to have been a misunderstanding between the agencies about what the role of MCPO should be. Multiple IMPD witnesses indicated that while there were two deputy prosecutors assigned to coordinate with IMPD during the course of the protests, police were told on Saturday, May 30 by the deputy prosecutors that they should communicate with the IMPD legal advisor rather than MCPO from that point on. We were told by those deputy prosecutors that they were willing to continue consulting with IMPD throughout the weekend, but they were not willing to interpret the law for IMPD beyond the clear letter of the law and thought the IMPD legal advisor should be the one to provide advice on when to make arrests. It is unfortunate that there seems to have been a communications failure between the two agencies. Had IMPD leadership been more fully aware of the inclinations of MCPO in terms of making charging decisions, for example, it might have impacted their instructions to their officers throughout the weekend.

In addition, the decision by the Mayor to issue a curfew order on Sunday, May 31 was not communicated in advance to or discussed with the Marion County Prosecutor. It would have been helpful to have a discussion in advance of the issuance of the order so that both the Mayor's Office and IMPD would have understood the Prosecutor's intentions in terms of pursuing curfew violation arrests.

It should be stated here that, while some criticized the Mayor's administration for failing to issue the curfew order on Saturday, and rumored that the delay was merely due to excessive time taken by City attorneys to draft the order, the truth of the matter was more complicated. As it turned out, the language of one of the Governor's executive orders in relation to the public health emergency posed by the COVID-19 pandemic would inadvertently have prohibited the Mayor

from issuing a curfew order as the Mayor's order would have contravened certain terminology in the Governor's order. That state executive order had to be amended quickly over the weekend to permit the curfew order at the city level.

Poor Communication with Civilians

Experts in modern policing talk about how important it is to communicate well with those whose actions are being policed. For example, it is important to explain why certain action is being taken. But the Panel heard from multiple civilian witnesses who were extremely frustrated at not being able to understand what the police were doing and/or why they were doing it. For example, as described in a subsequent section of this report: on Friday, May 29, a woman of slight stature was, according to witnesses, forcibly brought to the ground and placed in a police car by officers; but the bystanders could not determine what she had done to warrant such treatment. The Panel learned from police reports that this young woman was alleged to have thrown a metal barricade at a police car; but those in the crowd who did not see any such action were unable to obtain an explanation. When one civilian asked repeatedly for someone to identify the supervising officer on the scene to obtain an explanation, a particular uniformed officer was pointed out to her and identified as the on-scene supervisory sergeant; but the officer so identified refused to talk to the civilian or even make eye contact, according to an interview of the civilian in question and others.

The civilian witnesses interviewed by the Panel, and the public comments and writings of others, suggested that there was insufficient empathy expressed on the part of police and city leadership during the course of the weekend and ensuing week, though former Deputy Mayor David Hampton was complimented by several witnesses for his vital role in seeking to keep the peace and certain individual officers were complimented for their efforts. Mayor Hogsett shared with the Panel the written version of public comments he made on Saturday, May 30 and Sunday, May 31, which clearly attempted to strike a balance between condemning violence and expressing sympathy for the concerns of the protesters. However, it appears that those attending the protests did not see or hear those comments; or, if they did, did not deem them sufficient. They specifically told the Panel that they had wanted and/or expected to hear empathy expressed by representatives of IMPD in particular.

Lessons Learned During the Weekend of May 29

Multiple IMPD witnesses suggested that, as the weekend wore on, they learned valuable lessons that it can be presumed will be applied in the future. First, they reduced the visibility of the ERG units (with their accompanying riot gear) after Saturday, May 30, realizing that the appearance of those officers only escalated tensions in the crowds. Additionally, after May 30, they decided not to interfere with the ability of the crowds to march relatively freely through the streets.

Similarly, there was a move on Monday, June 1, to put officers on 12-hour shifts rather than the usual 8-hour shifts. However, multiple IMPD witnesses suggested in retrospect that this should have happened on Saturday May 30, after the events of Friday night (May 29) were analyzed.

B. Training Deficit

It is highly unlikely that the IMPD officers whose actions escalated the tensions of the crowd during the weekend of May 29 did so deliberately, nor is their misapprehension about effective tactics limited to their agency. There appears to be a significant need for updated training for all Indiana police officers, to help them better understand the appropriate role of the police officer in 21st Century America.

Much has been written about the fact that traditionally, police in the United States have been trained to be warriors, but that their most appropriate function is that of guardian²⁸. Their role should be to de-escalate tensions, not inadvertently escalate them through a show of brute force. There is much research available on this subject, outlining what law enforcement professionals have learned over the course of recent years. See, in particular, Maguire & Oakley, cited in the Research section of this report.²⁹

In Indiana, a 2019 enactment of the Indiana General Assembly directed Governor Eric Holcomb to appoint a task force to study the Indiana Law Enforcement Academy (ILEA). The ILEA provides training for police cadets throughout the state, and has done so for over 45 years. Though it also certifies five regional academies, including the IMPD Training Academy, the curriculum used must be approved by the ILEA.

The task force was composed of the Superintendent of the Indiana State Police, who chairs the ILEA board; the ILEA Director; and other law enforcement practitioners and experts. In analyzing the training provided by the ILEA, it studied other training academies and best practices in modern policing. Its members concluded that the training provided to police cadets in Indiana is outdated in various ways. Among them:

- The training uses paper-and-pencil tests and assumes that a good score equates to competent skills;
- It relies on lectures rather than scenario-based training that teaches a problem-solving approach and the ability to respond to rapidly-changing events;
- The lectures are siloed into discrete topics; and
- The training focuses on tactics (firing weapons, handcuffing suspects) as opposed to the philosophy of policing.

One of the members of the task force also told us that the method of instruction at ILEA is brusque and similar to a military boot camp approach, thus potentially conditioning officers to treat those they encounter on the streets in the same way. In short, it appears that ILEA trains police to be warriors, not guardians—but the jobs of the military and peace-keepers are very different. Research into policing techniques and the psychology of crowds makes it clear that the guardian approach, coupled with situational analysis and focused on the preservation of life and

²⁸ See Maguire & Oakley at 36.

²⁹ Policing Protests: Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police, January 2020, by Edward R. Maguire and Megan Oakley, funded by the U.S Department of Justice, Office of Community Oriented Policing and published by The Harry Frank Guggenheim Foundation.

de-escalation of violence, is more effective in accomplishing the primary goal of policing: keeping the peace. (See the Research section of this report for more on this issue.) Thus, those trained for ERG service tend to be focused on tactics around use of force to accomplish crowd control, rather than on a strategy to reduce tensions based on an understanding of crowd psychology. As a result, it is natural for officers to perceive the need for such force.

Interestingly, when IMPD announced in June 2020 an updated use of force policy that would rely on an “objective reasonableness” and proportionality of force analysis rather than simply the individual officer’s “reasonable belief” that a certain level of force was necessary, thus bringing IMPD into compliance with more modern policing methods, the Chief received a written communication from the ILEA board, warning IMPD that it could not institute such a change without approval from ILEA and suggesting that ILEA might take negative action against IMPD for making the change.

It should be mentioned here that in August 2020, Governor Eric Holcomb announced multiple initiatives intended to improve racial equity and racial justice in Indiana. One of these initiatives was to undergo an independent, in-depth review of the ILEA curriculum and seek recommendations for improvements.³⁰ The State of Indiana has since contracted with the police consulting firm of Hillard-Heintze, well known for its understanding of modern policing techniques. The Governor’s Office asked for a deep dive into the ILEA curriculum and recommendations for improvement. The firm’s report on this and other matters is due in the Spring of 2021.

It appears that IMPD has learned the traditional but outdated ILEA lessons well. For example, the ERG training is for the purpose of “crowd control”, according to those we interviewed who are involved in IMPD leadership. The responses of line officers to an unruly crowd were generally to confront it with force, not to try to de-escalate tensions and protect individuals’ right to protest. One IMPD witness interviewed by the Panel, who is a part of the trained ERG force, told the Panel, “Cops want to be police—we don’t want to hug the problem.” The Panel attributes this attitude to inadequate training, leading to an inappropriate understanding of just what his role is intended to be.

As indicated in the section on Lack of Planning/Coordination, it seemed that in many cases the leadership understood what the right approach should be (soft approach; always leave a means of egress; only use tear gas to protect people and property), but the rank and file did not uniformly use that approach when confronted with the crowds. The Panel again attributes this to insufficient training as well as insufficient internal communication.

The Panel was told that, due to significant turnover in the department, there is a large number of relatively new sergeants on the force, with little experience in supervision. Further, the Panel was told by many witnesses – both IMPD and civilian – that there is a significant number of young, less than fully trained officers, and a gap in the middle age and experience range. These factors, coupled with the fact that the training they do receive has been deemed inappropriate (see above

³⁰ See address of Governor Eric Holcomb, August 18, 2020: <https://www.in.gov/gov/governor-holcomb/newsroom/true-equality-and-equity-leads-to-opportunity-for-all/>

regarding the findings of the legislatively mandated task force in 2019), undoubtedly contributed to some of the problems that developed.

The panel recognizes that IMPD has changed its Use of Force policy to call for de-escalation; however, a change in written policy is insufficient to achieve the necessary change in behavior. Further, a settlement in the aftermath of the Aaron Bailey shooting (see pages 31-32 below) suggests that IMPD committed at that time to de-escalation training; but the events of the weekend of May 29-June 1 suggest that more is needed.

Training in de-escalation techniques and appropriate analysis of the need for force is readily available, and the Panel would recommend it to IMPD rather than suggesting that its leadership await the promulgation of a new curriculum at ILEA; further, the Panel would recommend department-wide training in this area and not just training for new cadets.

For an example of available resources, the Police Executive Research Forum (PERF), consulting with policing practitioners, academics and other experts, in 2016 created what are widely accepted Guiding Principles on Use of Force. PERF itself has described the Guiding Principles in this way:

The Guiding Principles, which were released in final form in March 2016³¹, are designed to give officers more specific guidance on use-of-force policy, training, tactics, equipment, and information needs. Some of the principles are general in nature (e.g., “Adopt de-escalation as formal agency policy”), while others are more specific (e.g., “Duty to intervene: Officers need to prevent other officers from using excessive force.”).³²

PERF’s Guiding Principles report also presents a new tool to support decision-making in the field, including during critical incidents. This tool, known as the Critical Decision-Making Model (CDM), is based largely on the National Decision Model that has been used effectively in the UK for several years. The CDM is designed to teach officers how to think critically about many types of complex situations, including incidents that could end with a use of force. Essentially, during a critical incident, officers using the CDM continually ask themselves questions about the nature of the incident, any threats and risks, their powers and authority to take various actions, and their options. After taking action, they assess whether the action had the desired effect, and if necessary, begin the decision-making process again. In a situation involving a potential use of force, officers trained in the Critical Decision-Making Model ask themselves questions such as, “Do I need to take immediate action, or do I have time to slow this situation down? What is the threat? What information do I need about the person I am dealing with? How can I establish rapport with this person and ask him questions that will help me assess what is happening and the risks? Do I need additional resources at the scene, such as specialized equipment, other police units, a supervisor, or officers specially trained in mental health

³¹ Police Executive Research Forum, 2016: Guiding Principles on Use of Force. <http://www.policeforum.org/assets/guidingprinciples1.pdf>

³² Some of these concepts are already incorporated in the July 2020 iteration of the IMPD Use of Force Policy.

issues? What could go wrong here, and how serious would the harm be? How can I mitigate potential threats?”

While this process may sound complicated, officers who have been trained in the CDM have said that as they use it every day in various situations, it becomes second-nature. They compare it to driving a car. When a person is first learning to drive, every action, such as activating a turn signal or keeping the car centered in a lane, requires thought. But after a short time, drivers perform many of the tasks of driving without consciously thinking about them. Similarly, officers who use the CDM become accustomed to constantly evaluating situations and considering a wide array of potential responses.

As indicated, PERF routinely conducts training in the use of the CDM to assist officers in making better choices prior to engaging in the use of force that might be excessive under the circumstances. The Panel would recommend this training to IMPD.

C. Actions of Police Escalated Tensions in the Crowd

IMPD utilizes various tools for responding to public protests and managing large crowds, impacting the escalation and de-escalation of violence. Chief among these is a group of officers who on a voluntary basis comprise the Event Response Group (ERG), referred to earlier in this report. The ERG has primary responsibility for crowd management during major public events. IMPD General Order 6.19 notes:

The Event Response Group (ERG) is a subset of the Mobile Field Force functioning in the Special Services chain of command that would respond to an emergency that requires a smaller mobilization of department resources than needed for a full Mobile Field Force deployment. ERG units will be used to staff special events that require specialized crowd management techniques.

Accordingly, the ERG is typically the first police presence witnessed by the protest participants and bystanders, given that historically protests in Indianapolis have not required a large police response. Concerning the duties outlined in the IMPD General Orders, the ERG uses crowd management methods that can include tactical equipment, chemical agents, and other tactics for directing and dispersing crowds.

Based on its discussions with IMPD leaders and officers, protest participants and bystanders, review of video footage and photographs taken of the events, and published research on policing mass demonstrations, the Panel identified several factors that may have escalated tensions and caused the peaceful protest to devolve.

(1) IMPD Appearance and Presentation

For the purposes of this report, tactical equipment will be understood to be what is commonly referred to as “riot gear” by members of the public. Protesters and bystanders used this term in reference to IMPD officers' appearance during the protests that occurred beginning on May 29, 2020. Some indicated that police “showed up in riot gear,” wearing helmets, face shields, reinforced vests, and batons. IMPD officers and other police departments indicate that riot gear is a common lay term for protective equipment worn by law enforcement during events in which crowd management is needed. Some civilians who were present at the protest on May 29th remarked that their uniforms were not “normal police uniforms” and that the uniforms and “riot gear” made the police look militarized and ready for battle. More than one person interviewed noted that wearing tactical gear sends a negative message that “we’re ready for a fight.” Protesters and witnesses interviewed also shared that the presence of paddy wagons and police vehicles in their view, along with what was perceived as military-style weapons, created the perception of an aggressive police posture from the onset.

Some IMPD responding officers stated that they did not have protective gear initially but retrieved it from their vehicles after the tensions began to escalate and they began to feel that the threat of violence had increased. The first confrontation between IMPD and protestors occurred on May 29th at Monument Circle. IMPD witnesses, protestors, and other witnesses confirmed that protestors raised concerns that the presence of police and their vehicles were restricting their

ability to march and protest. They agree that IMPD removed vehicles and backed away to allow protesters to march and demonstrate. IMPD witnesses note that at some point, protesters started going into the streets and obstructing traffic and causing potential safety concerns. This caused IMPD to return to Monument Circle and establish a barrier to prevent protesters from entering the street. The confrontation escalated when a water bottle was thrown at IMPD officers from someone in the crowd of protesters. Protest organizers noted that the person throwing the water bottle was not affiliated with them and quickly moved to chastise and remove the person. This was captured on video viewed by the Panel.

Video footage and pictures taken of confrontations between police and protesters in the early stages of the protest on May 29th show IMPD officers wearing what protesters and bystanders referred to as riot gear. IMPD officers noted that this equipment is meant for the safety of police officers. Many IMPD witnesses shared their belief that several officers would have likely sustained potentially life-threatening injuries when the peaceful protests turned violent if it had not been for the protective equipment. However, protesters and bystanders maintained that seeing IMPD in this gear contributed to the escalation that occurred due to their perception that the riot gear insinuated that aggression was expected.

It is important to note here that IMPD's actions after the events on May 29th and 30th appeared to be consistent with the research findings cited earlier in this report. The ERG officers, riot gear, and overall militarized police presence were less visible. IMPD bike patrols were also employed, replacing some of the tactics that were previously used; and police did not seek to contain demonstrators to a specific limited area but allowed them to march more freely. In addition, tear gas does not appear to have been deployed after May 31.

(2) Use of Riot Control Techniques

As indicated in other sections of this report, IMPD's response to the post-George Floyd protests was predicated on its training in crowd control tactics. Its response was primarily tactical, and not based on an understanding of the psychology of crowds. In particular, IMPD was at a disadvantage because its members seemingly lacked a clear understanding of how to address a crowd that was protesting the actions of the police themselves. In addition, while top IMPD leadership interviewed by the Panel seemed to believe that their officers had engaged in de-escalation techniques and other best practices, the review suggested that individual officers acted primarily at their own discretion and not pursuant to those best practices – often, by their actions, escalating rather than de-escalating tensions in the crowds. There was insufficient direction given to officers as to the philosophy they should follow in policing the protests, other than to “keep the peace”.

In addition to tactical (“riot”) gear, chemical agents for riot control purposes (referred by to IMPD as Riot Control Agents or RCAs) were also used beginning on May 29th. The lay term for the RCAs used for crowd management is *tear gas* and that term is typically used to describe most forms of RCA regardless of delivery method. These include foggers and gas that may be launched by device or thrown by hand. Specially trained ERG officers, known as “grenadiers,” are the only IMPD personnel authorized to use RCA launchers or gas grenades, which have explosive characteristics. Other ERG officers who are not grenadiers are permitted to use pepper

balls and foggers. All IMPD officers are issued and carry CS gas spray to be used on isolated unlawful individuals. This spray is not considered by IMPD to be the same as “tear gas” but is still considered an RCA. Most IMPD representatives we spoke with maintained that RCAs are the most effective non-lethal tool they have at their disposal for crowd dispersal.

One chemical agent used by ERG officers was pepper balls, which are small paintball-like pellets containing powdered pepper spray. Like paintballs, they are projected from a specially designed launcher (similar to a paintball gun) and intended for use on individuals. The Panel was informed that IMPD only issues pepper balls to ERG officers for events in which they are called to respond.

An IMPD official shared that pepper balls are used to stop aggressive action or isolate a person acting unlawfully to make an arrest. The use of pepper balls was characterized as one of the best non-lethal tools at law enforcement’s disposal for these purposes. The official stated that the psychological impact of getting hit with a pepper ball could make the affected individuals believe a bullet has struck them. Although the damage and injuries are significantly less severe, the reactions of individuals hit by the pepper ball can be similar and the use of the pepper balls may temporarily immobilize them. The Panel did not find any evidence to suggest that the psychological impact of getting hit with a pepper ball has led to longer-term psychological trauma. However, there have been reported incidents of unintended physical injuries. For example, a professor of criminal justice at Arizona State University who studies crowd control reported sustaining a concussion once from being shot in the head with a pepper ball.³³ They are also often linked with other non-lethal projectiles used by law enforcement agencies for crowd control, such as rubber bullets and bean bags. In a 2017 study on kinetic impact projectiles in crowd-control settings, the authors concluded these methods do not appear to be an appropriate means of force in crowd-control settings given the risk of serious injury, death, and misuse.³⁴ While these reports and studies may be valid, it should be clearly stated that there have been no such cases reported regarding IMPD’s use of pepper balls.

There did not appear to be agreement within IMPD on when pepper balls were used during the protests. The Panel did not get a clear picture regarding protocols regarding their use on individuals. It seems that their use is left to the discretion of the individual ERG officer. However, IMPD witnesses indicated that the guidance provided in their training suggests that officers should deploy pepper balls when circumstances so dictate, leaving a fairly wide margin for discretion and subjectivity. Multiple witnesses described being struck by pepper balls when they had not been doing anything disruptive, indicating that more guidance may be needed in training.

³³ Moffeit, Miles, et al. “I Felt like My Chest Was on Fire’: Photo Shows Dallas Police Officer Shooting Protester with Pepper-Ball Gun.” *Dallas News*, 11 Aug. 2020, www.dallasnews.com/news/investigations/2020/08/09/i-felt-like-my-chest-was-on-fire-photo-shows-cop-blasting-a-peaceful-protester-with-a-pepper-ball-gun-at-close-range/.

³⁴ Haar, Rohini J, et al. “Death, Injury and Disability from Kinetic Impact Projectiles in Crowd-Control Settings: a Systematic Review.” *BMJ Open*, British Medical Journal Publishing Group, 1 Dec. 2017, bmjopen.bmj.com/content/7/12/e018154.

IMPD witnesses noted that the purpose of deploying RCAs (tear gas) is to protect officer safety and prevent property damage and that they are not used until a threat is perceived. However, information from eyewitnesses, pictures, and video footage suggests that RCAs were used as a crowd management tool during May 29th and May 30th and were not directed only at individuals who were damaging property or posing a threat to officers. IMPD leadership expressed that officers should not use gas merely because they face a disorderly crowd; rather, by the time these tools are used, officers should be at the point of making an arrest. This philosophy did not appear to play out in reality. Similarly, IMPD leadership witnesses indicated that officers are required to assess the crowd for “vulnerables” (young and old) before deploying; however, there were instances in which young children were present and subjected to gas (see below); and in one instance on May 31, a person in a wheelchair was subjected to gas.

Moreover, several protesters and bystanders shared that tear gas was deployed before property damage occurred. This was confirmed by an internal timeline prepared by IMPD from radio transmissions. Some witnesses suggested that windows were broken in some cases to gain entry into buildings and escape the effects of the tear gas that had already been deployed, though that could not be verified by the Panel. Several witnesses stated that young children were present with their parents when tear gas was deployed. Scientists have indicated that the effects of RCAs are much more harmful to children. Tear gas is heavier than air, and therefore, is in higher concentrations at lower levels and where children breathe. This places them at greater risk for lung injuries and respiratory distress.³⁵

As previously noted, grenadiers are the only ERG personnel authorized to deploy gas grenades or RCAs from launchers. They must receive approval through the IMPD chain of command before deployment, which is typically based on an assessment of conditions. It was confirmed that this process was followed by the grenadiers.

Conversely, there did not appear to be a protocol for the use of foggers. All ERG personnel were issued foggers but apparently did not receive specialized training or instruction on when it may be appropriate to use them. Accordingly, the use of a fogger is left to the individual ERG officer's discretion based on the officer's assessment of the situation.

IMPD witnesses also indicate that IMPD protocol is to give a verbal warning before deploying RCAs and that in most cases, they deploy smoke first to determine the direction of the wind. This has the added effect of giving the appearance of tear gas as a crowd dispersal tactic. It was shared that this approach is intended in part to allow time for crowds to disperse before RCAs are deployed. However, most of the protesters and bystanders interviewed by the Panel indicated that they did not hear warnings or heard them immediately before tear gas was deployed, rendering the warning useless. IMPD officers also shared that they deployed smoke first in some cases but quickly switched to RCAs because projectiles were being thrown at them after smoke was deployed and they feared for their safety.

³⁵ Robert Glatter, MD. “Tear Gas Is Especially Harmful To Children-Here's Why.” *Forbes*, Forbes Magazine, 28 Nov. 2018, www.forbes.com/sites/robertglatter/2018/11/27/tear-gas-is-especially-harmful-to-children-heres-why/?sh=340afac47592.

When IMPD officers began to deploy uses of force such as pepper balls and 37mm CS gas launchers against the crowd in order to cause it to disperse, and/or used gas on the entire crowd because a few members were throwing water bottles at police, their actions only exacerbated the tensions in the crowd and in some cases caused the crowd to panic. These actions turned the crowd further against the police. As Maguire and Oakley suggest, a more effective approach would have been to facilitate the First Amendment protest of the vast majority of the crowd in the early hours of the protests, while targeting enforcement action only on those who were vandalizing and looting.

Since the weekend in question, IMPD policy on the use of tear gas has changed, such that the policy now dictates clearly the circumstances under which it may be deployed. In October 2020, the City of Indianapolis and IMPD agreed to settle a federal lawsuit filed by the American Civil Liberties Union (ACLU) on behalf of protesters to limit police use of tear gas and other riot control agents for crowd management. The lawsuit, brought on behalf of Indy 10 Black Lives Matter and certain individuals who had been involved in the protests, claimed that IMPD violated the First and Fourth Amendment rights of peaceful protesters when tear gas was used for crowd dispersal. The agreement states that IMPD will not use chemical agents during peaceful protests, even though unlawful acts may be occurring in the vicinity or elsewhere at the same time, unless there is an imminent threat of serious bodily injury or death.³⁶ Further, the agreement requires that IMPD, prior to using chemical agents, will make announcements to disperse in such a way as to give protesters a realistic chance of doing so before gas is deployed.

In its statement regarding the settlement, IMPD stated:

“This settlement reaffirms IMPD’s commitment to being responsive to how our community wants us to serve – adding to written policy the safety measures and de-escalation tactics recommended by the ACLU that were already part of training and practice for the Event Response Group. It is our hope that this agreement brings us one step closer to healing the division in our community and building the types of police-neighborhood partnerships that reduce violence and create a better Indianapolis for all to enjoy.”³⁷

One IMPD leader interviewed by the Panel stated that, in retrospect, while RCAs are useful, it may not have been the best idea to use tear gas during the protests.

(3) Crowd Management and Crowd Dispersal Tactics

IMPD representatives shared that efforts to cause the crowd to disperse began only at the point when they deemed the event to be an unlawful assembly. This determination appeared to be made when the peaceful protest began to become violent, and they perceived that threats to public safety and property were imminent. It was shared that IMPD’s expectations of crowd size

³⁶ <https://www.wishtv.com/news/local-news/impd-changing-policy-on-use-of-chemical-agents-after-aclu-lawsuit/>

³⁷ Covington, Olivia. “IMPD, BLM Reach Settlement on Tear Gas Use against Protestors.” *The Indiana Lawyer*, 29 Oct. 2020, www.theindianalawyer.com/articles/impd-blm-reach-settlement-on-tear-gas-use-against-protestors.

and management were based on their experience and the history of public protests in Indianapolis, none of which had previously produced a crowd of this magnitude. Consequently, IMPD's typical crowd management tactics during peaceful protests and demonstrations would not likely be sufficient or as effective given the lack of resources and experience with crowds of this size. The purpose of the demonstrations, which was to protest the actions of police themselves, also changed the crowd dynamic from what IMPD officers were accustomed to dealing with.

The Panel learned that the events on May 29th and May 30th included several activist groups working collectively and independently. There were also participants and bystanders who were not affiliated with any groups. The events spanned throughout downtown. Thus, it can be concluded that the "crowd" consisted of several groups who gathered in several locations.

The Panel was unable to find a clear and consistent basis for the determination by IMPD of when and how a group gathered in a location was deemed an unlawful assembly. In some cases, it was expressed that the determination was made when objects were thrown at police by a person or people in a crowd, putting officers' safety at risk. However, one IMPD official stated that "just because objects are thrown at the police, that doesn't make it an unlawful assembly." The Panel also discovered that there were times when individuals and groups had not put officer safety or public safety at risk and were not causing property damage but were deemed part of an unlawful assembly and dispersed by police.

IMPD employed strategies to be used for dispersing the crowd when leadership determined that the event had become an unlawful assembly. They moved people out of downtown through various routes and locations that had been selected. Through interviews, the Panel learned that this on occasion resulted in people being confined to those pre-selected areas as IMPD officers guided them through their physical presence, verbal directions, and by deploying tear gas in other areas to drive them toward or away from certain locations. In some cases, police appeared to block the demonstrators into a limited area by creating barriers on each side of the crowd. In the published research, this practice is referred to as "kettling," in which police confine demonstrators or protesters to small areas as a method of crowd control. Maguire and Oakley posit that the practice of kettling raises serious civil rights concerns as it fails to differentiate between peaceful protesters and those engaged in rioting.³⁸

Several protest participants shared that they had the overwhelming feeling of being "trapped" by police. They noted that the feeling of being confined or limited to certain areas coupled with the physical effects of tear gas moving through the air made them feel as if they were stuck and in danger, leading to panic on the part of those in the crowd. Some shared that the routes and locations determined by police prevented them from returning to where their vehicles were parked.

³⁸ Policing Protests: Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police, January 2020, by Edward R. Maguire and Megan Oakley, funded by the U.S Department of Justice, Office of Community Oriented Policing and published by The Harry Frank Guggenheim Foundation, at 37.

Two prominent examples of kettling appear to have occurred. On May 29th, witnesses shared that they felt trapped on Capitol Avenue south of Ohio Street and north of Washington Street, and on Market Street between Capitol and Illinois, when police appeared to block their egress through barricades and/or lines of police on both sides of the crowd. On May 30th, a similar circumstance occurred on Market Street between Delaware and Alabama Streets, and on Alabama Street between Market and Ohio Streets, after one person present broke a glass window at the City-County building. In both instances, both protest participants and bystanders expressed that IMPD's efforts did not appear to differentiate between those who were peaceful and those who were acting unlawfully. In some cases, arrest records seemed to bear this out – for example, one report described rock and bottle throwing on May 30 at that location by unnamed individuals, followed by the arrest for disorderly conduct and rioting of named individuals who were not alleged to be the ones throwing rocks and bottles but who were “yelling and making loud noise” and refusing to get out of the street.

The IMPD representatives interviewed by the Panel acknowledged that when the protests began to become unsafe, they focused on crowd dispersal rather than crowd management. As the tensions began to reach a crescendo and property damage began to occur, many shared that their primary goal was to end the situation as quickly as possible by evacuating the downtown area. Consequently, the perceptions of feeling trapped may not have been created intentionally, but resulted, nonetheless.

(4) Confiscation of Protester Medical Supplies

There appeared to be some discrepancies in the statements of IMPD and protesters regarding the purpose, handling, and disposition of supplies that protesters brought or had delivered, categorized as medical supplies. All agreed that medical supplies included items to reduce the impact of chemical agents, such as bottled water, milk, and items to treat respiratory issues, such as Albuterol Inhalers and the like. Other equipment and materials intended for first aid were also discussed. Medical supplies were primarily located at Monument Circle, where medically trained personnel and others were stationed, and transported in plastic bins. When medical supplies became depleted, replacement supplies were brought in. According to civilian witnesses, the provision for medical supplies is a normal aspect of modern protests; indeed, one witness pointed out to the Panel that in order to obtain an official permit to march, every group is required to provide a medical/safety plan to City officials.

Some IMPD officers and officials stated that the medical supply bins also contained items that could be used as weapons against the police. Items they described included frozen water bottles (which they believed were intended to be used as weapons), rocks, and sticks. Because of this, IMPD officers indicated that they confiscated and disposed of these items for their safety. One IMPD official stated that the only confiscated items were those that appeared to be “abandoned.” Some IMPD officials also argued that it could be inferred that if protesters brought medical supplies, they were expecting to need them as they intended to provoke the police.

Nearly all protesters and Medics we spoke with disagreed that medical supply bins contained items that could be used as weapons. No one recalled that frozen water bottles were present but some witnesses reasoned that others may have brought frozen water because of the extremely

warm temperatures so that when they melted, the water would still be cold. They refuted claims that the medical supply bins contained rocks or sticks, and also strongly refuted IMPD claims that medical supplies were confiscated only when abandoned. Medics and protesters who were stationed at the medical supply locations stated IMPD officers approached them and confiscated the supplies in their presence. Photographs of this occurring were provided as evidence. This left the protest participants feeling that IMPD “stole” medical supplies from them, leaving them defenseless.

Change in Tactics

During the course of the weekend – in particular, after the first two nights – IMPD leadership realized that some of its actions were likely exacerbating rather than de-escalating tensions and took appropriate action to change tactics in certain regards. For example, they reduced the visibility of the ERG members and anyone clad in tactical gear, and they decided not to try to interfere with the marching as opposed to the attempts to contain it on Friday and Saturday evenings. While there may have been additional intervening factors, such as the fact that Monday was a work day and many people may have stayed home on Sunday evening, these changes in IMPD tactics certainly made a positive difference.

Summary

To summarize, a series of police actions likely contributed to a reaction from the crowd predicted by the research if the police agency fails to follow the best practices described. Those actions included:

- ERG members clad not in regular “soft” uniforms but in tactical or “riot” gear (helmets, reinforced vests) and staged in full view of protesters who at that point were completely peaceful, if vociferous, escalated tensions in the crowd.
- The confiscation of medical supplies made attendees feel that the police were setting them up for injury and depriving them of their ability to care for each other when, for example, tear gas was used.
- Officers who saw growing crowds deemed them “unlawful assemblies” apparently based on the number of people involved and seemed to declare crowds to be unlawful assemblies somewhat randomly.
- Once they made these decisions, the officers began deploying tear gas and pepper spray/pepper balls, without sufficient warning to the crowds to disperse.
- On at least two occasions, the officers had protesters cut off in both directions, and the protesters felt trapped between two flanks of officers. In each case, the officers then deployed tear gas, causing panic among members of the crowd.

D. Mutual Misunderstandings Between IMPD and the Civilian Community Contributed to Distrust on the Part of Civilians

Background

One important fact that both IMPD witnesses and demonstrators agreed upon was this: based on the history of the City of Indianapolis, both IMPD and community organizers expected a peaceful protest on May 29. Indeed, the organizers pointed out that the protests in the aftermath of the Dreasjon Reed shooting earlier in May were peaceful. Several police officers noted that the last time riot conditions existed in Indianapolis was at the time of the College Avenue riot of 1995.

Despite this singular alignment of expectations, there were several instances in which mutual misunderstanding, and to some extent distrust, fueled tensions between IMPD and the community. For example, the police were of the view that protestors showed up on May 29, 2020, prepared for violence. Experienced civil protest organizers said that they were acting responsibly and entirely consistently with past history, and planning for a peaceful protest.

Several community organizers stated that historically the way they have been treated by IMPD makes it difficult for them to live in Indianapolis. Some specific examples cited included being watched by an IMPD officer while working at a regular job; and waiting in a fast food drive-through and being surrounded by officers (this witness was told her white car fit a suspect's car description, which she later learned was another make and model and black).

Several civilians and protest leaders agreed that their community has a deep distrust of IMPD based upon several past incidents, including these prominent recent examples:

Aaron Bailey Shooting

Aaron Bailey, an unarmed 45-year old black man, was shot and killed in June 2017 by two IMPD officers in a late-night traffic stop and vehicle pursuit that concluded with Bailey crashing his vehicle. Four rounds struck Bailey in the back. The incident led to protests by civilians who considered the officers' behavior to be unjust. There were peaceful protests held around the city for several days. As part of the protests, organizers chalked the sidewalk in front of the City-County Building. Some reported that police officers in plain clothes stood by with buckets and mops, seeming to taunt them with the inference that as soon as they left, the chalk drawings they had created on the street would be removed. The civilians felt that this was disrespectful to them and to their cause.

A special prosecutor declined to file criminal charges against the officers who shot Bailey. The FBI turned its investigation over to the U.S. Attorney who also declined to file criminal charges. An internal investigation by IMPD resulted in then-Police Chief Bryan Roach recommending that both officers should be fired. However, the Civilian Police Merit Board rejected Roach's recommendation and reinstated both officers. Community groups were outraged by this decision and it added to the tension and divide between IMPD and the black community. This resulted in a very strong community response in opposition. In June 2018, the family of Aaron Bailey received \$650,000 from the City of Indianapolis in settlement of their civil case. The settlement included

agreement by the City to continue de-escalation training for all IMPD officers with the goal of avoiding having interaction between police and civilians escalate to the type of loss involved in the Aaron Baily incident.³⁹

Dresjean Reed Shooting

This was an officer-involved shooting that occurred on May 6, 2020, at 6200 N. Michigan Road.⁴⁰ Among other things, events that night and into the early morning hours of May 7, 2020, added to the community's distrust of IMPD. Close in time to the Reed shooting on May 6, 2020 was the shooting of McHale Rose on May 7, 2020, in the early morning (Rose called to report a burglary and fired on police with a rifle when they arrived) and the death of Ashlyn Lisby, a pregnant woman who was struck by an IMPD officer's car. These two incidents happened in close proximity in time to one another and to the Reed shooting and were perceived by some in the community to constitute serial police criminal misconduct – though the McHale Rose shooting was later deemed by the Marion County Prosecutor, based on the evidence, to be a clear case of police self-defense, and evidence regarding the Ashlyn Lisby death indicated it was a tragic accident, not an intentional killing.

At the time of the Dreasjon Reed shooting, only certain details were known publicly. As reported in news stories at the time based on information provided by IMPD:

- On May 6, 2020 at approximately 6:00 p.m. Indianapolis Metropolitan Police Department (IMPD) Deputy Chief Kendale Adams was traveling northbound on Interstate 65 at West 30th Street when he observed a vehicle, described as a grey Toyota Corolla with four doors, driving recklessly. The vehicle had almost struck other vehicles while it exited the interstate. Deputy Chief Adams was in an unmarked police vehicle and Chief Randal Taylor was in a separate vehicle directly behind Deputy Chief Adams. Both Chief Taylor and Deputy Chief Adams were in uniform.
- Deputy Chief Adams asked for other officers' assistance as he began a pursuit on the vehicle. Chief Taylor continued to assist Deputy Chief Adams. The vehicle continued driving at a high rate of speed and disobeying all traffic signals.
- As marked cars arrived in the pursuit, Chief Taylor and Major Adams removed themselves from the pursuit as is standard procedure. At 6:10 p.m. the pursuit was terminated by the Sergeant monitoring the pursuit. Officers immediately backed a way from the vehicle and disengaged their emergency equipment.
- Just before 6:16 p.m. a Northwest district officer observed the grey Toyota Corolla pull into the rear of a business in the 6200 block of Michigan Road. The driver then jumped out of the vehicle disregarding the officers' verbal commands to stop. A short foot pursuit occurred east bound from the location. Initial information indicates the officer deployed his taser. It appears the taser was ineffective, and an exchange of gunfire between the driver and the officer followed. The driver was struck by gunfire.
- The officer was not hurt in this exchange; however, the driver, later identified as Dreasjon Reed, was pronounced deceased on the scene.

³⁹ IndyStar, June 18, 2018.

⁴⁰ Some organizers expressed the view that the protests on the weekend of May 29 – June 1, 2020, were planned and intended to be about the Dreasjon Reed shooting. However, as the weekend drew near, the widespread social media and the George Floyd killing and the abundant outrage added to the energy and number of participants in the events of the weekend.

- Officers located a firearm near Mr. Reed at the scene, which was collected as evidence. The distinctive appearance of the firearm matched one Mr. Reed had been seen posing with on social media.
- Ballistic evidence recovered from the scene initially indicate that shots were fired from both the officer's weapon and Mr. Reed's weapon. Details would later be confirmed after testing by the Marion County Forensic Services Agency.
- The IMPD Critical Incident Response Team was expected to handle the criminal investigation.

Given the skepticism already felt by community residents about IMPD, residents were distrustful of the information given out by IMPD at that time, and distrustful of any investigation to be conducted by IMPD itself. Months later, as indicated on page 2 of this report, a special prosecutor was appointed and the case was exhaustively investigated by the Indiana State Police. A special grand jury convened to hear evidence in the case determined that no criminal charges against the officer were warranted. The Indiana State Police presented the evidence in the case in a lengthy public forum on November 10, 2020, accompanied by video showing that Reed did have in his possession that evening a firearm with a distinctive appearance, and bullets were fired by both his gun and that of the officer.⁴¹ However, in the weeks immediately after the shooting, there was considerable skepticism on the part of community residents based on their history of distrust of IMPD. The comment by an officer not involved in the shooting indicating that a closed casket would be needed significantly inflamed tensions as it suggested an insensitivity toward Mr. Reed and a cavalier attitude among police regarding police involved shootings.

Another basis for the divide between the community and IMPD is the perception by community residents that IMPD officers do not get to know civilians in the community in order to better understand them. Several individuals referenced what IMPD refers to as “community policing”, i.e. officers coming to neighborhood meetings to talk about what IMPD is doing, as little more than a publicity move. Several citizens shared that they believe that police should work on building social capital with the community in order to enhance crime prevention. This would involve spending time and interacting with the community on a day-to-day basis. A separate concern was expressed about the significant number of IMPD officers who do not live in Marion County and so are not in the best position to know the community they serve. This divide was further described by some community organizers describing the frequent instances of IMPD officers in their neighborhoods barking orders and threatening arrest when private citizens are simply asking questions.

A specific example of this type of activity was captured during the May 29 – June 1, 2020 weekend by an amateur videographer. On the evening of May 29, 2020, he was walking along Market Street near Pennsylvania Street and commenting at length with disappointment about the destruction committed by some in an oral narrative accompanying his live feed, which the Panel later reviewed. An IMPD officer brusquely ordered him to leave and threatened to arrest him if he did not do so.

⁴¹ See <https://www.youtube.com/watch?v=qIB-IC4A3pM>.

How the Mutual Misunderstandings Played Out During the Events of May 29-June 1, 2020

The historic gap in understanding continued into the events of the weekend of May 29, 2020. As indicated earlier in this report, civilians felt threatened by the manner in which IMPD was outfitted beginning on the afternoon of May 29. Specifically, civilians saw police in helmets, face shields and tactical vests, appearing to be militarized and in riot gear. With both sides looking at the same picture, they saw different things – the civilians saw police ready to cause harm to civilians, while the police believed that they were outfitted to protect themselves from harm intended by the civilians.

Another basis of distrust of the police cited by protesters was the presence of many different law enforcement agencies on the scene, especially during the early hours of May 29, 2020, when the scene was peaceful. They did not understand why such a show of force by multiple agencies was necessary.

Several individuals described a situation that occurred on the northwest quadrant of Monument Circle during the early part of the evening of May 29, 2020, when a small woman was thrown to the ground by police and arrested and put into a police car. Several witnesses asked why and what happened. After receiving no response, one individual asked to speak to an IMPD supervisor. After several requests, IMPD officers at the scene identified a white female IMPD officer as the supervisor. When approached by one or more of the civilians present, the officer refused to talk to them.

IMPD witnesses expressed the view that IMPD has always had an open channel of communication with community organizers. Although this might have been true in the past, it seems clear that at least since the Aaron Bailey shooting, this channel of communication is not as open as it once might have been. IMPD witnesses acknowledged that communication between IMPD and community organizers did not occur in the days leading up to May 29, 2020. Moreover, it is clear from interviews conducted by the Panel that there was not total alignment among the protest organizers, so that when IMPD believed they were talking with “leaders” or key individuals in the community based on past experience, this might not have been an accurate assessment.

In many instances the same occurrence, behavior or communication was perceived in vastly different ways by police and civilians. See the chart below for examples.

Facts	View by Police	View by Protestors
Online training for civilians for protest tactics, strategy, safety	Protestors and demonstrators intend violence	Many first-time protestors learning tactics, strategy and safety
IMPD ERG Officers dressed in helmets, face shields, tactical vests	Officers in uniform as assigned and protecting themselves	Officers dressed for “battle” in “riot gear”

Facts	View by Police	View by Protestors
Large number of police marching down streets and large number of protestors	Police felt “outnumbered”, overwhelmed by large crowds	Protestors felt threatened by large, multi-agency police presence
Protestors’ supplies included water bottles	Police thought the bottles were carried to be used as weapons	Protestors equipped with water as part of safety supplies on a hot summer evening
Bricks and other barriers placed to block off intersections	Traffic control	Limiting movement and ability to march
Protestors showed up with medical supplies	Civilians expecting or planning to be violent	Medical supplies to address medical needs
Cases of water, first aid kits, containers of milk stacked in plastic bins on the Circle	Chief Taylor commented that coming to a protest with materials used to treat tear gas (water, milk) suggests that protestors intend to be violent	Legitimate medicine and personal supplies

Misunderstandings Clarified

In a few instances, the Panel was able to debunk some misunderstandings on the part of civilians.

On May 29, there was an articulated IndyGo bus extending across Capitol Avenue just north of Washington Street. Some protestors thought that this was the result of a “conspiracy” between IMPD and IndyGo to block protestors from marching. The Panel confirmed with the President and CEO of IndyGo that this was in fact a circumstance in which the bus sought to execute a U-turn to avoid the crowds but got stuck in the street. That description of the situation was validated by contemporaneous IMPD radio transmissions reporting a bus out of service at that location and at that time, for that reason.

Another example of erroneous conceptualizing related to the sight of armed officers seen exiting the backs of ambulances. Several protestors claimed the use of ambulances was a cover in order to facilitate armed officers insinuating themselves into the crowds. However, Indianapolis Emergency Medical Services (IEMS) confirmed that it followed longstanding practice for situations involving large unruly crowds, inviting officers to ride in ambulances in order to provide support and protection to what is referred to as “tactical EMT” teams. It was pointed out that having the ambulances drive directly into the crowded streets, close to the crowds, saved more than one life that weekend due to the ability of IEMS to respond promptly; one example of this was a young woman who kicked in the window of the Sheraton Hotel at Ohio and Meridian Streets, severely injuring herself and requiring immediate medical attention. In retrospect, the Panel was

told, IEMS personnel intend to do a better job of communicating with the public in the future in order to avoid such misunderstandings.

Some of the witnesses expressed concerns regarding exposure to expired tear gas. IMPD confirmed that some of the gas canisters that were used displayed expiration dates that had passed. Civilian witnesses were concerned that exposure to expired chemicals could have long-term negative health effects. However, the Panel did not find any scientific proof or research to support this notion.

Some theories suggest that many types of aging chemicals could be dangerous. However, it appears that the expiration date on tear gas canisters refers to the effectiveness of the firing mechanism that causes the canister to combust. It was the opinion of one medical professional that the chemicals found in an expired tear gas canister may actually be less potent due to age. Nonetheless, the strongly held perception that expired tear gas may cause long-term or future health issues added to the significant public concerns regarding tear gas used during the protests.

Suggestions from Community Members

Civilians expressed some views on how to improve the relationship between IMPD and the community. Although they acknowledged that IMPD promotes what it calls community policing, they contend that what is happening in Indianapolis is not true community policing, and this is borne out by research on community policing. The civilians suggest that IMPD expend more of an effort to develop trust with the community by getting to know residents at the neighborhood level. This would require some intentionality to commit to building social capital as part of crime prevention strategy. If successful, this approach would have the dual benefit of earning the trust of community residents and improving the ability of IMPD to solve crimes, as community residents would be more willing to come forward with information if they trusted the police to a greater degree.

Community organizers and activists had many ideas about what they believe needs to change within IMPD. In addition to some of the changes in policy that occurred in the summer and fall of 2020, the following were noted:

1. IMPD should not show up to a peaceful protest in militarized response and dress;
2. IMPD should not target medics/medical supplies.
3. Response should be proportionate to the threat.
4. IMPD should be more transparent about policies and leadership.
5. Police brutality should not be tolerated and must be eliminated.
6. Leadership must improve.

- a. There were several people who referenced Chief Taylor's statement in response to complaints about the use of tear gas when he responded, "What do you expect us to use? If not tear gas, back to dogs and firehoses?" This rekindled upsetting memories of violent racial repression in the 1960s.

7. Acknowledgement by IMPD that systemic racism exists.

Several community organizers and protestors spoke favorably of former Chief of Police Bryan Roach. They described him as being straightforward and approachable, among other things. They further described him as someone who demonstrated a desire to work with the community, often reflecting on an incident to ask the question "what should we (IMPD) have done?" They appreciated his strong position in favor of terminating the two officers responsible for the death of Aaron Bailey, as well.

5. RECOMMENDATIONS

Based on the information gathered through witness interviews, IMPD documentation and voluminous video evidence, as well as best practices research obtained from experts in 21st Century policing methods and crowd psychology, the Panel has developed the following recommendations:

- **Improved Training** – Training of IMPD officers should be improved department-wide and at all levels, beginning at the cadet level with the curriculum approved by the Indiana Law Enforcement Academy (ILEA), which has been criticized for its outdated curriculum and methods of delivery.⁴² In the fall of 2020, Governor Holcomb commissioned a review by an outside police consulting firm that is anticipated to result in updated training curricula approved by the ILEA. The training provided to IMPD must include the protection of the First Amendment rights of those who demonstrate and engage in public protest. The training should include cultural competence, differentiation between lawful protesters and criminal actors, and de-escalation training. See the “Training Deficit” section of this report for additional detail and suggestions as to appropriate training.
- **Internal Planning and Communication** – IMPD should develop a clear strategic plan for each day of any such demonstration that respects the rights of legitimate protesters and calls for differentiation between them and those engaging in criminal activity. The plan should be clearly communicated each day to all officers reporting for duty. Though individual officer discretion is necessary in the field, it should be governed by clear orders from leadership that require protection of the rights of peaceful marchers and a separate focus on looters and those engaging in other criminal activity. There also should be better communication among agencies, including the Mayor’s Office and the Marion County Prosecutor’s Office.
- **Use of De-Escalation Techniques Rather Than “Disorder Control” Tactics** – IMPD appears to have relied on tactics designed to control disorder rather than facilitate protected speech. The “Miami Model” (a more aggressive approach to protests used by Miami police in response to protests of the Free Trade Area of the Americas negotiations in 2003), referred to by at least one IMPD official we interviewed, is not a recommended approach to managing First Amendment based demonstrations. This model, according to Maguire and Oakley, is “characterized by an aggressive, militarized approach to protest control”.⁴³ They indicate that while this approach may be appropriate in some rioting situations, it should not be used to address peaceful protests.⁴⁴ As indicated elsewhere in this report, such an approach is likely to have a tendency to exacerbate, rather than relieve, tensions.

⁴² Report of the Governor’s Task Force on Law Enforcement Training (October 31, 2019)

⁴³ Maguire & Oakley, page 32.

⁴⁴ *Ibid.*

- **Avoid Excessive Use of Force** – Officers should be clearly instructed on the appropriate use of force. Consistent with the agreement IMPD and the City have already reached with the American Civil Liberties Union, tear gas should not be used for the sole purpose of dispersing crowds. Further, pepper spray and pepper balls should not be used other than to control individuals who are in fact committing offenses.
- **No Encircling of Crowds** – the NYC/DOI described the actions of the NYPD, when encircling crowds/blocking egress, as “kettling” – defined in the research literature – and advised that it only contributes to heightened tensions and should not be a tactic that is employed.⁴⁵ The Panel endorses this recommendation in the case of IMPD as well.
- **Avoidance of Aggressive Posture** – Officers interfacing with such crowds should, if at all possible, be attired in “soft”, or normal, police uniforms. Officers equipped with riot gear should be staged nearby in case of need but out of sight of the crowds.
- **Improve Outreach to Community** – IMPD needs a more robust outreach to the Indianapolis community, including real community policing and two-way communication with residents throughout the community. IMPD leadership must improve its current relationship with the community, which must start with active listening. The Panel is aware that IMPD leadership participates, for example, with the Greater Indianapolis Progress Committee’s Race and Cultural Relations Leadership Network (RCRLN) on a regular basis. The Panel suggests that leadership seek specific input from the members of the RCRLN and also from the broader community on how it can revive trust among Indianapolis residents, and follow that advice. The community must be informed by IMPD about why it is taking certain action, and IMPD must be more transparent in its communications with community members. While communication is a two-way street, IMPD must realize that the responsibility for improving communication with the community is primarily its responsibility.

⁴⁵ Footnote 2, supra, page 3.

6. CONCLUSION

There are many useful lessons to be learned from the events of the weekend of May 29-June 1, 2020 in Indianapolis.

It is clear that the magnitude of the gatherings in Downtown Indianapolis that weekend were unprecedented; but to a certain extent, they were insufficiently anticipated by IMPD, given the tensions that had been building since early May in the city. The Panel recognizes that Indianapolis had never before experienced demonstrations of the size and emotional level that existed during that weekend as a lot of pent-up emotions were displayed.

Further, while the vast majority of those in attendance had the intention of peacefully, if vociferously, protesting, admittedly there were opportunists in the crowd who took advantage of a chaotic environment to commit crimes and inflict significant damage on Downtown businesses. The IMPD response failed to differentiate between these two very different groups of people, with highly unfortunate consequences.

The approach initially taken by IMPD, based on national research findings, likely exacerbated the tensions of the crowd and contributed to an atmosphere of lawlessness that made it easier for the opportunists to take license they might not otherwise have, and turned the peaceful crowd against the police even as they were also critical of those engaging in property damage and looting. The Panel recognizes that after the first two nights of chaos and destruction, IMPD leadership changed its tactics in a way that contributed to more peaceful demonstrations on the following days. However, a strategic and thoughtful approach from the outset, coupled with better communication – internal and external – might have avoided a great deal of physical and psychological damage to our city and its residents.

It is important to note that the chaos and destruction that occurred cannot completely be laid at the feet of front-line IMPD officers, who, as indicated, were unprepared for and insufficiently trained to address a demonstration of this magnitude, were given insufficient direction by their superiors, and were unaccustomed to demonstrations for the purpose of protesting the police themselves. Further, it is very difficult to manage a crowd of this nature in any circumstance. In fact, police departments all over the country had similar experiences in May and June 2020.

The in-depth studies that have been conducted in relation to the actions of other police departments have identified striking similarities to what occurred in Indianapolis, primarily in relation to their efforts to control, rather than facilitate, legitimate First Amendment protest and their failure to differentiate between peaceful protesters and those engaged in criminal activity. However, the fact that other departments made the same mistakes does not excuse IMPD or indicate that the recommended changes are unnecessary.

It is equally important to note that the destruction and violence that occurred cannot be laid at the feet of the peaceful protesters. Many factors converged to lead to the commission of illegal and violent acts by some members of the crowd, but it is clear that the greatest number of people in attendance were present only to exercise, in a vociferous but nonviolent manner, their First

Amendment rights. Indeed, there were repeated instances captured on video in which peaceful protesters tried to prevent violence by others and decried the vandalism they witnessed.

It is the hope of the Panel that its recommendations will be accepted in the spirit in which they are intended: to assist IMPD in improving its response to future First Amendment protests, and to assist the entire Indianapolis community in moving forward in a positive manner that will contribute to greater understanding and trust on all sides.