

REPORT BY INDEPENDENT COUNSEL TO

THE HUNTSVILLE POLICE CITIZENS ADVISORY COUNCIL

ADDRESSING THE EVENTS OF JUNE 1 AND 3, 2020

Elizabeth H. Huntley
Jackson R. Sharman III
Independent Counsel
Lightfoot, Franklin & White, LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203

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EXECUTIVE SUMMARY

I. INTRODUCTION

As contemplated by Huntsville City Council Resolution 20-487 (“the Resolution”), this Report outlines the review by the Huntsville Police Citizens Advisory Council (the “CAC”)¹ of the Huntsville Police Department’s (“HPD”) conduct in response to protests in Huntsville last summer, especially on June 1 and 3, 2020, arising from the death of George Floyd (the “Floyd protests”).

For purposes of this Report, the CAC focused on HPD’s institutional and operational systems for responding to the Floyd protests, including but not limited to HPD’s planning, training, strategy, intelligence collection and dissemination, and crowd-management techniques. Thus, this Report provides a systemic review rather than an investigation into the actions of individual HPD officers. In Huntsville, accountability for the actions of individual police officers or supervisors must come through internal disciplinary investigations or external criminal investigations. Such investigations are the responsibility, respectively, of the HPD Internal Affairs Division or of criminal prosecutors (state or federal). Individual actions may also be the subject of civil lawsuits. Matters relating to individual HPD officers are not the province of the CAC.

II. PRELIMINARY OBSERVATIONS

Public trust is critical if law-enforcement agencies are to successfully perform their vital work and to honor their duty to serve and protect the public. Policing can be dangerous, life-threatening work, and officers are given extraordinary powers—to carry a firearm, to detain and arrest citizens, and to use force where necessary to protect their own lives or the lives of others (or, where appropriate, to prevent unlawful destruction of property). Further, citizens make amazing demands on the police—and HPD is no exception. Like law enforcement nationwide, HPD officers respond to every species of emergency; they see some of the most awful things that humans do to one another; they protect the weak, the vulnerable, and the abused; they investigate crime; and, with a few exceptions, they do their best to get justice for victims (or their families) and, at the end of the day, to uphold the rule of law.

On the other hand, citizens require (and deserve) the fundamentals: that the police discharge their duties without fear, favor, or bias; that they discipline their members who fail to do so; and that they be held publicly (and sometimes uncomfortably) accountable. Law-enforcement responses to hot-button issues and civil unrest are always under scrutiny and likely always will be. Where the civil unrest focuses not on an external issue such as abortion or immigration but on

¹ Other portions of the Report will refer to the CAC as the “HPCAC.” The terms are synonymous.

police conduct itself, the value of public trust (or the danger of its absence) appears in bright relief.

In Huntsville, the Floyd protests were relatively peaceful—especially compared to violent instances nationwide—and many (although not all) of HPD’s actions were appropriate. Nevertheless, the protests also triggered confrontations between HPD and protesters, resulting in claims that officers had used inappropriate tactics and unlawful force against Huntsville citizens who were exercising their First Amendment rights.

III. SUMMARY CONCLUSIONS AND RECOMMENDATIONS

We² summarize below our observations, conclusions, and—where appropriate—recommendations for potential action by the Huntsville City Council. This is a summary only, a summary that focuses on highlights and particular points of interest. It is not a substitute for reading and considering the entire Report.

First, we address particular issues most often raised by citizens before the Huntsville City Council, the CAC, Independent Counsel, or the media. Second, we consider broader issues from the overall review.

A. Particular Issues Frequently Raised

Several common themes or complaints arose in the immediate aftermath of the Floyd protests. First, we frame the issue; then we provide our observations and conclusions; and finally, we offer, where appropriate, recommendations.

1. Rubber Bullets

Witnesses testified that law-enforcement officers used rubber bullets, a “less lethal” munition, as a means of crowd control during the Floyd protests; that the deployment of rubber bullets was inappropriate and excessive, given the circumstances; and that, even if it were appropriate to resort to rubber bullets, officers discharged them in a manner inconsistent with appropriate use.

a. *Summary observations and conclusions*

The evidence related to the use of force that is of perhaps the greatest concern to the public—the firing of rubber bullets—is not entirely clear. MCSO used them; HPD may or may not have used them. Given the ballistics and characteristics of the other types of rounds HPD used, a layperson unfamiliar with such munitions could conclude that they were, in fact, “rubber bullets” when they were not. On the

² Within this Report, “we” or “our” refers to the CAC and Independent Counsel unless otherwise specified.

other hand, there is some evidence to indicate an HPD officer may have fired “rubber bullets” from a less lethal 12-gauge shotgun on June 3. Audio from body-worn camera (“BWC”) footage reflects an HPD officer on June 3 saying he fired five “finned” rounds from his shotgun. The officer’s description of the rounds as “finned” is relevant because it matches HPD’s description of a rubber bullet as a “rubberized device which has stabilizer fins on it.” That officer is no longer with HPD.

b. *Recommendations*

Because we lack evidence about the tactical context in which five “rubber bullets” may have been deployed by an HPD, we do not express any views about their use in that instance. At a minimum, however, the modest amount of evidence before us indicates that there are inventory control and oversight issues about such munitions that should be addressed.

2. Rooftop snipers aiming into crowds

During the Floyd protests, officers were visible atop the Madison County Courthouse pointing rifles into the crowd.

a. *Summary observations and conclusions*

The officers on top of the Madison County Courthouse were apparently using their rifle scopes as binocular-substitutes to observe the crowd. These snipers were officers from MCSO and from the Madison Police Department (“MPD”). No HPD officers were involved in this conduct. When questioned about this practice, HPD Chief McMurray testified that although it is wise to secure the tops of buildings in a scenario such as the Floyd protests, he would not allow his officers to use rifle scopes in that fashion.

b. *Recommendations*

Because the snipers were not HPD officers, we do not have an *HPD-specific* recommendation on their deployment. We have concerns about the snipers regarding command and control, which we discuss below.

3. The use of “beanbag” shotgun rounds against protesters

HPD deployed another form of less lethal munitions, so-called “beanbag” rounds, against protesters.

a. *Summary observations and conclusions*

HPD officers deployed a significant number of beanbag rounds. Some of those instances appear to violate HPD policies regarding the use of less lethal force. Although protesters prior to being shot with beanbags were throwing items such as

water bottles, trash cans, and traffic cones in the officers’ direction, those items (with at least one exception) do not appear to land near the officers. Because HPD did not produce any training records concerning beanbag rounds—or training records about the use of less lethal force at all, for that matter—we do not know the nature, frequency, or recency of such training (if any) given to the officers. Because HPD did not allow us to interview any officers (other than Chief McMurray) involved in the Floyd protests, we do not know what individual officers’ training was in this regard; what orders they were or were not given individually or collectively about beanbags; or whether the officers in charge of such munitions followed HPD policies.

b. *Recommendations*

HPD should produce a full record regarding the deployment of beanbags at the Floyd protests, especially with regard to training of line officers involved in the Floyd protests; the process by which beanbag shotguns (and rounds) were distributed, used, and accounted for; and any reviews or disciplinary actions taken for beanbag use. Given the limited information we have, it is not feasible to make more detailed recommendations.

4. The use of “drones” at the Floyd protests

Citizens complained about law-enforcement’s use of unmanned aerial vehicles (“UAVs,” more commonly known as “drones”), claiming that the Federal Aviation Administration (the “FAA”) regulates the use of drones and that their deployment in this context was a means of intimidation and an attempt to chill constitutionally protected rights of expression.

a. *Summary observations and conclusions*

HPD Chief Mark McMurray testified that HPD’s drone operators are trained by third-party vendors who are themselves licensed by the FAA and who help obtain the appropriate certificates for HPD “pilots.” We believe that this practice is sufficient.

b. *Recommendations*

Unless a future regulatory flaw in HPD’s procedures comes to light, we do not have a specific recommendation about drones. Unmanned aerial vehicles are becoming a more common aspect of daily life and their simple presence, without more, cannot reasonably be construed as inappropriate. Also, UAVs provide a bird’s-eye view of events for better facilitation of large events.

5. The use of chemical agents to disperse protesters

Law-enforcement agencies used chemical agents to disperse protesters at the Floyd protests. Some citizens claimed that the deployment of chemical agents was an overreaction and an inappropriate or unlawful use of force.

a. *Summary observations and conclusions*

The use of teargas, pepper spray, and smoke as means of dispersing crowds is always unfortunate, but it is also a widely accepted tool when other measures have not been effective. Although some citizens complained of short-term ill effects, we are not aware of chronic, long-lasting harm arising from chemical agents that HPD deployed. On the other hand, there were individual instances when HPD officers used pepper spray in a manner that was, at a minimum, unprofessional and on multiple occasions in violation of HPD policy. HPD officers also made comments that demonstrated their lack of a serious appreciation of the use of pepper spray and further indicated ignorance of HPD policy.

b. *Recommendations*

As we discuss in greater detail throughout this Report, HPD officers expected to deploy chemical agents need extensive training in circumstances that would more closely resemble the challenging issues raised by the Floyd protests.

3. The Gathering, Analysis, and Use of Intelligence

Another significant part of HPD’s preparation for and response to the Floyd protests was HPD’s use of intelligence. No doubt a useful tool, intelligence has some subjective aspects and is subject to debate before and during this review.

a. *Summary observations and conclusions*

HPD, primarily through the North Alabama Multi-Agency Crime Center (“NAMACC”), gathered information from various sources—national news, social media, public tips, and public safety bulletins. All appear to be appropriate sources, but we see potential concerns with HPD’s analysis and use of some of these inputs. Evidence suggests HPD may have overreacted to some social media posts or other information. Additionally, HPD’s methodology for identifying reliable intelligence is unclear.

b. *Recommendations*

Moving forward, we encourage HPD and NAMACC to continue training regarding intelligence assessment of mass events the Floyd protests and to collaborate with other agencies with familiarity with these issues. HPD should also use intelligence as a means to improve communication with stakeholders. Finally,

to the extent safe and appropriate, HPD should be more transparent with its intelligence processes for preparing for and responding to protest events.

B. Broader Issues Noted in the Course of Review

Additional themes and issues arose during our review. As above, we discuss those matters first by framing the issue; then by providing our observations and conclusions; and finally, by offering, where appropriate, recommendations.

1. Poor communication

There was poor communication on multiple fronts, and for multiple reasons, that likely exacerbated the tensions and confusion in the Floyd protests and the recriminations that followed them.

a. Summary observations and conclusions

One source of repeated complaints and confusion was the change of time for the end of the permitted protest on June 3. Although we find nothing nefarious in the change of time itself, the communications between HPD and the organizers; between the organizers and their membership; and between HPD and the public left much to be desired. In addition, HPD communication with the public after the Floyd protests was defensive; at times inconsistent; and open to charges of after-the-fact rationalization.

Finally, the audibility of orders to disperse—an important step before chemical agents are deployed or force applied—was compromised because HPD, apparently lacking appropriate systems, employed tools (such as bullhorns and the LRAD) that did not work well. Like many tools, the LRAD has an appropriate use and requires competent deployment. To be fair, the LRAD can be louder than the traditional megaphone or loudspeaker, but because the LRAD relies on narrowed and concentrated sound for effectiveness, its sound may not cover as broad of an area.³ Additionally, the siren or “area denial” function of the LRAD may be an effective means of dispersing a crowd, but care is required because of the high decibel level of that function.⁴

b. Recommendations

Even in the context of fast-moving events—which the Floyd protests were—communications need to be informed, formal, consistent with policy, and redundant. Both the City and HPD have access to social media platforms. Messaging on those platforms before, during, and after such events will enhance communication and

³ See *Edrei*, 892 F.3d at 529.

⁴ See *Edrei*, 892 F.3d at 529–30, 543–44.

reduce tension. Although one hopes that HPD will not have many occasions in the future to communicate at the street level during such events, HPD should consider how best to broadcast dispersal orders and other messages in an extremely loud, fragmented, unsettled situation. HPD should further train with the LRAD to ensure it is used for optimal effectiveness balanced with appropriate restraint. Finally, HPD’s after-action reporting—both internally and to the City Council—needs to reflect ambiguity and uncertainty where appropriate; admit mistakes; and not overread its actions in the most positive light.

2. Lack of self-awareness

HPD did not sufficiently appreciate the difficulties involved when law enforcement itself is the subject of the protest.

a. *Summary observations and conclusions*

Policing high profile civil unrest is difficult under the best of circumstances. Law-enforcement officers must guard against loss of human life and destruction of property while also guaranteeing constitutionally provided rights of expression and assembly—and they must do so in a fluid environment. Most HPD individual officers conducted themselves professionally during the Floyd protests, even in the face of uncalled-for provocation. On the other hand, HPD did not seem to appreciate that the dynamics are different when the subject matter of the protest is not an extraneous issue (immigration, for example, or abortion) but rather the police officers themselves. Rather than being in a traditional neutral role of monitoring antagonists and keeping them separate and safe, the police during the Floyd protests were—accurately or inaccurately—the almost exclusive subject of the demonstrations. In that context, ordinary decisions that one might take to control a crowd, such as the timing of deployment of officers in riot gear, take on a heightened significance that would be lacking (and not a problem) in the management of a potentially violent crowd, say, after a concert, or in the protection of a dignitary visiting Huntsville. In the Floyd protests, that heightened significance made matters worse.

b. *Recommendations*

With the caveat that HPD did not provide us any training records, we expect that HPD needs more training for this particular kind of event. Fortunately, Huntsville does not have an extensive history of civil unrest in the modern era. It is understandable how budgets, training, and focus related to civil unrest might take a backseat. A nationwide uprising over police use of force is not a concert or a visit by a high-ranking dignitary, however. Officers need and deserve to be trained in this very particularized problem.

3. Lack of command and control over inconsistent use-of-force policies

Although the Floyd protests revealed no significant HPD command and control problems in the traditional sense, other law enforcement agencies engaged in questionable tactics during the protests, within the city limits of Huntsville, without the approval of Chief McMurray, the Huntsville mayor, or the City Council.

a. *Summary observations and conclusions*

The law-enforcement response to the Floyd protests involved multiple agencies—primarily HPD, MCSO, MPD, and the Alabama Law Enforcement Agency (“ALEA”). HPD Chief McMurray characterized the response as a “joint” effort, and there was indeed coordination among agencies. On the other hand, a “joint” response inevitably means that no one decisionmaker was in charge. Chief McMurray believes that, once the protests became focused on the Madison County courthouse, Madison County Sheriff Turner, in effect, became the commanding officer of the response and Chief McMurray his subordinate. We have not found legal support for that belief. Further, as discussed above, Chief McMurray noted his disapproval of deploying rubber bullets for crowd control and of the use of rifle scopes as binoculars, yet both practices—two of the more controversial that brought us to this point—were on display within the city limits of Huntsville by agencies over which the City Council has no control.

b. *Recommendations*

Madison County, the City of Huntsville (“the City”), and the City of Madison (“Madison City”) should enter a memorandum of understanding (an “MOU”) that will define the parameters of the use of force in instances where their law enforcement officers engage in joint operations like the Floyd protests. Such MOUs are common in both military and law enforcement operations where different sets of operators have a need to coordinate and deconflict different philosophical approaches to rules of engagement, escalation of force, and tactical procedures.

4. Lack of cooperation

HPD declined to make officers available for interview by the CAC and Independent Counsel, other than Chief McMurray, and either cannot or will not produce important categories of documents.

a. *Summary observations and conclusions*

In any review or investigation, access to documents and witnesses is critical if the investigator wishes to determine not only what is *supposed* to happen but what *actually* happened, and why. Policies can shed light on the organization, but such materials rarely reveal the granular detail of events—especially when those events are disputed—or the intent of individuals within the organization as they carry out

their jobs. We were not allowed to interview any line police officers involved in the Floyd protests. HPD was concerned that officers forced to sit for an interview with the CAC—an “outside,” non-departmental entity—and its Independent Counsel would violate HPD’s human resources policy and thus give rise to an HR claim by the officers against the City; that statements by officers could increase the likelihood of disciplinary action against them for matters irrelevant to the protest events under review; that officers’ statements could create potentially adverse evidence against officers or the City in civil litigation; and that the offered precautions would not provide adequate criminal legal protection for officers. These concerns are understandable but unfounded, for reasons set out in detail later in this Report. Without being able to examine officers about critical matters peculiar to them—intent, orders (as they perceived them), training, munitions, communications with protesters (as the officers perceived those communications)—it is difficult for us to present a complete picture. HPD’s intransigence on this point is unfortunate also for HPD itself: our guess is that, had we been able to interview officers who responded to the Floyd protests on June 1 and June 3, the officers may have been able to offer background and insight that would have been favorable to HPD.

b. *Recommendations*

The City Council should require a greater transparency from HPD.

5. Civilian police oversight review board

Both before and during our review, citizens raised the idea of creating a formal civilian police oversight review board.

a. *Summary observations and conclusions*

Several American cities—primarily large metropolitan areas—have a formal civilian police oversight review board. Other cities have a police department “ombudsman,” and still others have an officer who is internal to the local police department but who functions as an inspector general and reports outside the department. Although they differ in size, scope, responsibility, and authority, the common theme of these structures is independent review of police department actions. Like most policy options, there are pros and cons to police review boards. On the one hand, they are independent; professionally staffed with lawyers and investigators; cloaked with necessary authority; and, potentially, possess subpoena power or other tools to compel evidence. On the other hand, such boards can be expensive; readily politicized; “captured” by the very agency they are supposed to watch; and disproportionate to the needs of a municipality that is not a major metro area.

b. *Recommendations*

Given the reasonable arguments both for and against such a board, the CAC does not take a position either way. It is, however, a question that the City Council should consider in light of the Council’s broader governance and legislative duties.

THE SUMMER OF GEORGE FLOYD: THE BLACK LIVES MATTER MOVEMENT AND PROTESTS IN HUNTSVILLE

The year 2020 will be known for two things: the Covid pandemic and the civil unrest that followed the death of a man named George Floyd. A brief review of that landscape is appropriate because that was the stage on which Huntsville citizens and HPD played their respective roles.

I. GEORGE FLOYD AND NATIONWIDE UNREST

On 25 May 2020, George Floyd, a forty-six-year-old Black man, died while being detained by Minneapolis police officers. A video taken by a bystander showed Officer Derek Chauvin kneeling on Mr. Floyd’s neck for nearly nine minutes while Mr. Floyd repeatedly said, “I can’t breathe.” The Minneapolis Police Department fired Chauvin and three fellow officers the next day. Why was this terrible event particularly crucial last summer?

Over the previous decade or so, there has been significantly increased discussion and concern over racism in the criminal justice system generally and in policing in particular. The increased availability of video from smartphones, and the more widespread adoption by law enforcement agencies of BWCs, contributed to the breadth and speed by which these concerns were articulated, especially after a particular incident such as Mr. Floyd’s death. Two police-related shootings stood out for their effect on the Floyd protests.

Ahmaud Arbery. A twenty-five-year-old Black man out for a run, Ahmaud Arbery was pursued and shot to death by armed white residents of a coastal South Georgia neighborhood on 23 February 2020. After video of the event surfaced, the police arrested two men, Gregory McMichael (formerly a police officer then investigator with the local agencies initially handling the investigation) and his son Travis McMichael, on May 7 and charged them with murder and aggravated assault related to Mr. Arbery’s killing. The Georgia Bureau of Investigation—which took over the investigation from local authorities—said Travis McMichael had fired the fatal shots.

Breonna Taylor. On 13 March 2020, Breonna Taylor, a Black medical worker, was shot and killed by Louisville police officers during a mishandled raid on her apartment. The officers involved were fired, and one officer was criminally charged with wanton endangerment of Ms. Taylor’s neighbors. There have been no criminal charges for causing Ms. Taylor’s death.

A Summer of Covid. As a matter of good weather and academic calendars, summer has traditionally been a likely time for civil unrest. More notably, the summer of 2020 was unprecedented from a public health standpoint in the recent history of the United States. Millions of people across the country were in a Covid-driven “lockdown.” As was the case across the country, some people in Huntsville were out of work; even those still employed were required to work from home in a business landscape that was dislocating, alienating, and fast-changing. Public life was stymied: sporting events were cancelled and recreational facilities closed. Restaurants, bars, and non-essential businesses shut down or offered limited services. Those who had work that could not be done from home put themselves at greater risk of contracting the virus while also doing the vital work of caring for the sick, keeping food in stores and delivered to homes, picking up garbage, delivering mail and packages—and protecting public safety.

Protests began May 26 and 27, first in Minneapolis and then across the country. The protests were sparked by Floyd’s death but expanded to embrace broader concerns about systemic racism in law enforcement and whether police are held accountable for excessive force. On May 27, demonstrators gathered around and set fire to the police station in Minneapolis where the officers involved in George Floyd’s arrest were based. Police evacuated the building and retreated. On May 28, President Donald Trump in a tweet blamed the violence on a lack of leadership in Minneapolis and threatened to send in the National Guard. He followed up with a second tweet that warned “when the looting starts, the shooting starts.” The second tweet was hidden by Twitter for “glorifying violence,” a decision by Twitter that itself caused controversy.

On May 29, authorities arrested Officer Chauvin and charged him with third-degree murder and manslaughter, subsequently upgraded to second-degree murder. Officer Chauvin’s trial began on Monday, 8 March 2021. A jury convicted Officer Chauvin on all counts on 20 April 2021.

George Floyd’s death sparked protests nationally and then globally, giving new prominence to the “Black Lives Matter” (the “BLM”) movement. Amid a heated narrative, the unrest in many American cities turned increasingly violent. President Donald Trump continued to take a vocal position on what he saw as local municipalities’ failings in controlling the violence—for example, in Portland—and concerns about violent non-BLM protesters (such as “antifa” radicals) were voiced in the media and in Congress. By May 31, violence had spread across the United States to about seventy-five cities; at least five people were reported killed in protests; thousands were arrested; and curfews were imposed. Although many protests—including many in Huntsville—were peaceful, nationwide from late May through the first week of June hundreds of police officers across the country were

injured.⁵ By one estimate, there were in total protests in more than 140 cities; perhaps 14,000 people were arrested; roughly two dozen people died in related violence; and there was over a billion dollars in property damage.⁶ As noted above, these events occurred in midst of the Covid pandemic. Law enforcement agencies were dealing with the real challenges of the public health crisis and the strain on operations, morale, and staffing.

II. EVENTS IN HUNTSVILLE

Huntsville was not immune from the national landscape. The second largest city in Alabama and the seat of Madison County, Huntsville has experienced little significant civil unrest in modern times. Recent events—the deaths of two Black citizens, Crystal Ragland and Dana Fletcher, coupled with a separate controversy over a Confederate monument—may have had a disproportionate effect on the landscape leading up to the events of June 1 and June 3.

A. Deaths of Dana Fletcher and Crystal Ragland

Crystal Ragland. On 30 May 2019, HPD officers shot and killed Crystal Ragland when they responded to the Stadium Apartments, near Milton Frank Stadium, after apparently receiving a call about an armed woman waving a gun at her neighbors. An incident review board found that the officers involved acted consistently with HPD policies.

Dana Fletcher. On 27 October 2019, Dana Fletcher died in an officer-involved shooting outside Planet Fitness on Highway 72 in Madison. Madison County found that the use of force was justified. An internal MPD review found that the officers acted consistently with department policies and procedures.

B. The Controversy Over the Confederate Monument

Courthouse Monument. In 2019 and in 2020, considerable controversy arose over a Confederate monument at the Madison County Courthouse, controversy that is relevant to the landscape of the events considered in this Report. The United Daughters of the Confederacy erected the statue in 1905. Because it was located on Madison County property (the grounds of the courthouse) rather than on the City’s property, the City was powerless to lawfully remove statue. That distinction that did not lessen the anger, confusion, and misunderstanding that attended the issue.

⁵ Bowden, Ebony. “More than 700 Officers Injured in George Floyd Protests across US.” *New York Post*, June 8, 2020. <https://nypost.com/2020/06/08/more-than-700-officers-injured-in-george-floyd-protests-across-us/>.

⁶ Kingston, Jennifer A. “Exclusive: \$1 Billion-plus Riot Damage Is Most Expensive in Insurance History.” *Axios*, September 16, 2020. <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html?stream=top>.

After the events considered in this Report, on 23 October 2020, the County removed the monument.

III. THE HUNTSVILLE CITY COUNCIL

Huntsville has a mayor-council form of government. In the summer of 2020, Tommy Battle was Mayor. There were five members of the City Council: Frances Akridge, Will Culver, Devyn S. Keith, Bill Kling, and Jennie Robinson. Mr. Keith was City Council President at the time of the Resolution; Ms. Robinson is City Council President at the time of submission of this Report. After the Floyd protests of early June, and because of much-publicized controversies and complaints, there were demands for the City Council to provide for a review of the events.

IV. THE HUNTSVILLE POLICE DEPARTMENT

HPD has about 500 sworn officers and about 200 civilian personnel. It is accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc. (or “CALEA”).⁷ HPD’s senior command structure consists of a Chief; two Deputy Chiefs; and four Division commanders (over Administrative Services, the Criminal Investigation Division, the Special Operations Division, and the Police Academy). There are three geographical precincts (North, South, and West). There is no external oversight function. Internal oversight appears in the form of reviews by the Internal Affairs Division. The Incident Response Team (“IRT”), according to HPD:

is prepared to respond to Civil Disorders, Natural Disaster, and Hostage/Barricaded Subject calls or any other incident that requires long-term perimeter containment. The Incident Response Team, properly deployed in a timely manner, will discourage resistance in a confrontation between police and a large, unruly crowd or unlawful assembly, provide a coordinated and appropriate response to natural disasters, and provide proficient and solid containment during critical incidents involving hostages and/or barricaded subjects.”⁸

⁷ CALEA is a joint creation of the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs' Association, and the Police Executive Research Forum.

⁸ See McMurray, Mark. Rep. *Huntsville Police Department 2019 Annual Report*. Accessed April 16, 2021. <https://3jzi0q2zthm01oqpx2h96lz1-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/2019-Annual-Report-Final-2.pdf> (“HPD 2019 Annual Report”). Based on our review of publicly available HPD Annual Reports, the deployment of the IRT most analogous to the Floyd protests were protests associated with the (now removed) Confederate memorial at the Madison County Courthouse. In September of 1994, the predecessor to the IRT was deployed to control strike-related violence at the Dunlop plant. The large majority of other IRT deployments appear to have involved dignitary protection and maintenance of order at concerts or similar gatherings. Because we were not allowed to interview IRT officers on the scene of the Floyd protests, we are not able to describe those officers’ actual levels of training or experience in analogous circumstances.

HPD is also a founding member agency of NAMACC. Law enforcement officers from multiple federal, state, and local agencies staff NAMACC on a full-time or part-time basis. NAMACC acts as a “fusion center” that can provide services in intelligence gathering and analysis, statistical analysis of crime, and technical and technological assistance for criminal investigations. As discussed more below, NAMACC played a large role in HPD’s response to the Floyd protests.

V. THE RESOLUTION, THE CAC, AND INDEPENDENT COUNSEL

The three components that ultimately led to this Report were the Resolution as passed by the City Council; the charge to the CAC; and the retention of Independent Counsel. We address each in turn.

A. The Resolution

After considering and debating several forms of legislative action, the City Council on 25 June 2020 passed a resolution. Because it is the organic document that guided the CAC and Independent Counsel in their review, we set it forth in its entirety:

RESOLUTION NO. 20-487

WHEREAS, the tragic death of George Floyd, in Minneapolis, Minnesota, has provoked great concern and anger among citizens across the country, including the State of Alabama and the City of Huntsville; and

WHEREAS, that concern and anger has resulted in widespread protests and demonstrations across the country, including in Huntsville, Alabama, some of which have culminated in civil unrest and confrontations between civilians and law enforcement; and

WHEREAS, such confrontations in Huntsville, Alabama, have resulted in concerns being expressed by citizens over the interaction between protestors and demonstrators with local law enforcement; and

WHEREAS, the Huntsville Police Citizens Advisory Council (HPCAC) was created by Ordinance in 2010, which Ordinance was later amended in 2012, to strengthen bonds between the Police Department and the community and to serve in an advisory capacity to the Police Department regarding issues relevant to police and community relations, including actions, philosophies, behaviors and practices that contribute to community tensions, grievances and complaints; and

WHEREAS, the HPCAC is composed of 10 diverse citizens from throughout the community, and conducts regularly scheduled meetings that are open to the public; and

WHEREAS, the HPCAC is ideally constituted to investigate and evaluate the circumstances surrounding interactions between protestors and demonstrators and the Huntsville Police Department, especially as occurred on June 1 and 3, 2020.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Huntsville Police Citizens Advisory Council is hereby authorized and empowered as follows:

- a. To fully review the protests and demonstrations which began on or about May 30, 2020, especially those which occurred on June 1 and 3, 2020, as to the interactions between the protestors and demonstrators and the Huntsville Police Department; and
- b. In conducting their review, HPCAC will have access to any resources at the Huntsville Police Department, including access to employees involved in the events to be investigated and documentary evidence, such as video footage from aerial surveillance and body cameras, provided employees shall retain any constitutional or procedural protections to which they are entitled under the constitution and/or statutes of the United States and/or the State of Alabama or the Employee Policies and Procedures of the City of Huntsville; and
- c. In conducting a vigorous review, the HPCAC shall remain independent of influence by the City Council or the Administration; and
- d. That, upon completion of their review, HPCAC will make public their report and recommendations by reporting same to the City Council in open session.

The Resolution is both robust and particular. It provides that the CAC will “fully review” the Floyd protests, particularly regarding June 1 and June 3; that it “will have access to any resources” at HPD, “including access to employees involved in the events to be investigated,” subject to procedural protections for employees; that it “shall remain independent of influence”; and that its findings and this Report will be public.

B. The CAC

The CAC was created by municipal regulation in 2010. It was designed to “serve in an advisory capacity to the police department regarding issues relevant to police and community relations.” Its members are volunteer, uncompensated laypersons. The CAC functions as a ten-member board appointed for two-year terms, and members must be Huntsville residents without a criminal background. Two seats are appointed by the Mayor (one must be from the Human Relations Commission); three seats are appointed by the Chief of Police (one must be of Hispanic origin); and five seats are appointed by the City Council (each Council member appoints one seat). From before the date of the Resolution and through the date of the submission of this Report, the members of the CAC were as follows:

- Vicki Guerrieri (Chair) (District 3 appointee)
- Gregory Bentley (District 1 appointee)
- Wiley Day Jr. (District 5 appointee)
- Ruben Flores (Chief of Police appointee)
- David Little (Chief of Police appointee)
- Willie Love (Mayoral appointee)
- Shelly McCulley (District 4 appointee)
- John Olshefski (Mayoral appointee)
- John Reitzel (Chief of Police appointee)
- Jonathan Rossow (District 2 appointee)

After passage of the Resolution and the charge to the CAC, some citizens criticized the CAC as being composed of amateurs who were too close to HPD for a thorough, fair, and independent review. Regarding members’ “amateur” status, it is true that they are unpaid, volunteer residents of Huntsville. If anything, they should be praised rather than blamed for the work they have done with neither compensation nor compulsion. The extraordinary amount of time and resources they have devoted to carrying out the wishes of the City Council, in circumstances where they have nothing to gain personally or professionally, represents the discharge of a high civic duty. As for the thoroughness, fairness, and independence of the CAC’s review, this Report speaks for itself.

C. Independent Counsel

Recognizing the lay, part-time status of the CAC, the City Council authorized the CAC to retain outside lawyers as Independent Counsel. The cornerstone of the retention of an independent counsel is, not surprisingly, independence. As the Huntsville City Attorney noted at the 13 July 2020 meeting of the CAC, “[o]ne of the important things that the Council specified was the independence of this review.” Retention of outside lawyers was consistent with the Resolution, which is

quite specific on this point: “In conducting a vigorous review, the HPCAC shall remain independent of influence by the City Council or the Administration”

Although Liz Huntley and Jack Sharman of Lightfoot are officially the Independent Counsel to the CAC, the review is a team effort by Lightfoot lawyers who bring unique skills, diversified experiences, and different styles to bear on the task of helping the CAC carry out its duties as described in Resolution. Lightfoot team members were chosen for specific skills, backgrounds, and experiences relevant to this review. A brief description of the CAC’s lawyers is appropriate.



Liz Huntley. A formidable lawyer and committed child advocate, Liz is Senior Counsel and Director of Community Relations and Engagement at Lightfoot. As someone whose childhood in Huntsville was tainted by poverty and other challenges, Liz has become a well-known child advocate in Alabama. She regularly provides legal and consulting services to government and nonprofit agencies that serve children and families. Liz serves on the Children’s Village Board of Directors, the Alabama School Readiness Alliance, the Auburn University Board of Trustees, and the University of Alabama School of Law Board of Governors.

Jack Sharman. This review is the most recent in decades of high-profile investigations for Jack. He served as Special Counsel to the United States House Financial Services Committee for the Whitewater investigation involving President Bill Clinton. From 2016 to 2017, Jack was Special Counsel to the Judiciary Committee of the Alabama House of Representatives for the impeachment investigation of Governor Robert Bentley. He leads Lightfoot’s White-Collar Criminal Defense and Corporate Investigations practice group. In that role, Jack guides public entities, private corporations, and individuals through business crises, civil and criminal white-collar prosecutions, and internal investigations.



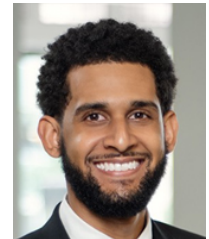
Brandon Essig. Before joining Lightfoot, Brandon spent more than a decade in public service. He worked for nearly eight years at the Department of Justice. As an Assistant United States Attorney, he worked with federal and state law enforcement and also prosecuted corrupt police officials. He investigated and prosecuted a variety of crimes including public corruption, fraud, money laundering, violent crime, organized drug trafficking, environmental crimes, and child exploitation. Brandon was a captain in the Marine Corps prior to his work for DOJ. His military service encompassed time as a prosecutor and ten months assigned to a Marine Corps infantry unit, including a seven-month deployment to Fallujah, Iraq.

Jay Sewell. Before he went to law school, Jay worked as a police officer and detective, graduating at the top of his class at the Northeast Alabama Law Enforcement Academy. During his time in law enforcement, he investigated a wide variety of cases including all manner of theft and fraud as well as violent crimes—some investigations drawing national media coverage. With his unique background and specialized investigative skills, Jay understands the duties of and demands upon both the police officer on the street and the commander at headquarters.



Amaobi Enyinnia. As the second child of two Nigerian immigrants living and working in Murfreesboro, Tennessee, Amaobi has always appreciated the perspectives of people from every walk of life. Since every review is different, he knows that finding the best answer to a problem requires knowing even the smallest details, understanding the needs and characteristics of all parties, and a willingness to work tirelessly toward the best solution. He makes it a point to remind us of what Theodore Roosevelt once said: “We cannot do great deeds unless we are willing to do the small things that make up the sum of greatness.”

Richard Rosario. Even during law school, Richard became intimately familiar with the challenges facing municipalities and the issues arising from the criminal justice system. He worked with the Federal Public Defender in Nashville and helped challenge Tennessee’s lethal-injection protocol. He also worked at Nashville’s Metropolitan Legal Department and at the Nashville Public Defenders where he successfully argued multiple motions and represented his clients in hearings. At Lightfoot, he practices white-collar defense, conducts investigations, and handles product liability and medical malpractice matters.



D. Summary of Review

As detailed throughout this Report, the CAC, assisted by its Independent Counsel, put a great deal of time, thought, and energy into this review and resulting Report. They:

- Set up a dedicated website, independent of HPD and the City, through which members of the public could make video submissions and provide comments, then reviewed each of those submissions and comments;
- Held three public “listening sessions” heavily attended by Huntsville citizens and organizations;

- Sought and, to some extent, received relevant documents from the City and from HPD;
- Sought (but did not receive) relevant documents from law-enforcement agencies other than HPD who were also involved in the Floyd protests;
- Reviewed official statements, news stories, and social media postings from both individuals and organizations regarding the Floyd protests;
- Reviewed HPD records relating to the policing of the Floyd protests;
- Reviewed HPD video and publicly-available video of incidents at the protests;
- Conducted fact-finding interviews with civilian individuals having firsthand knowledge regarding the events of the protests;⁹
- Sought input from Huntsville businesses most likely to have been affected by the Floyd protests;
- Consulted with a law-enforcement subject matter expert;
- Reviewed studies and published reports on protest policing generally and in particular on other cities' law-enforcement responses to the Floyd protests; and
- Prepared this Report.

E. Limitations on the CAC

Despite the considerable volume of work set out above, the CAC operated with several limitations of which the reader should be aware.

No Subpoena Authority. The CAC has no subpoena authority. To obtain information, it depended on the cooperation of individuals and organizations.

⁹ The CAC and Independent Counsel endeavored to carry out all interviews of witnesses in a consistent manner. Some individuals initially expressed a desire to interview with us, but they wanted to conduct the interview in a manner inconsistent with our other interviews. Due to these witnesses not being willing to conduct an interview in the same manner as other interviews, we did not have interviews with these individuals.

No Secrecy. The CAC is not a grand jury. It can strive for confidentiality but cannot guarantee secrecy to witnesses. The lack of secrecy can, at times, impair the integrity of investigation.

Not the Judiciary. The CAC is not a court. It lacks judicial power. There is no “case or controversy” before it. There is no requirement in the Resolution for the CAC to make legal findings. This Report will not offer an advisory legal opinion, but it will provide legal analysis where appropriate to understand either the policies or the actions at issue.

Not A Police Board. The CAC is not an outside police-review committee. The CAC enhances communication and relationships between HPD and the community, and it sponsors events in which any citizen of Huntsville may participate. It is also useful for ad hoc projects like this review and Report. It is not, however, a “police board” with an independent budget, professional staff, and procedural authorities, such as one sometimes finds in major metropolitan areas.

Not A Policymaker. The CAC is not a comprehensive community policing-policy entity. Cities have varied in their response to the unrest that occurred during the summer of 2020. The spectrum of responses ranges from doing nothing to enacting elaborate special committees or review boards for considering not only the specific events of the summer but the entire landscape of the relationship, both past and present, between law-enforcement on the one hand and the local community—and especially the local Black community—on the other hand.¹⁰ Whatever benefits such a broad-based approach might bring, the Resolution focused the CAC on specific days and events.

Limited Cooperation. Perhaps because of these handicaps, the CAC and Independent Counsel received limited cooperation from public agencies, including HPD — and, from several agencies, no cooperation at all.

THE REVIEW

I. THE CAC’S INITIAL WORK

A. CAC Meetings

In addition to reviewing a voluminous amount of both written and video information, the CAC has met numerous times since the Resolution called for the

¹⁰ See, for an overview, Barker, Kim, Mike Baker, and Ali Watkins. “In City After City, Police Mishandled Black Lives Matter Protests.” *The New York Times*, March 30, 2021. https://www.nytimes.com/2021/03/20/us/protests-policing-george-floyd.html?stream=top&utm_campaign=newsletter_axiosam&utm_medium=email&utm_source=newsletter. For some specific examples of reviews, consider those from Chicago, IL; Indianapolis, IN; Newtown, MA; Philadelphia, PA; New York, NY; Lincoln, NE; which are cited in Appendix I.

CAC to conduct the review that is the subject of this Report. Since June 2020, the CAC met at least once or twice per month as a group to work on the review. The CAC members also participated in numerous witness interviews as a part of the fact-finding stage of the protest review. In addition, the CAC conducted three public listening sessions.

B. Public Listening Sessions

To begin the fact-finding stage of its review, on 9 July 2020, the CAC launched a community input portal via the City of Huntsville website, where members of the community could share their thoughts and concerns directly with the CAC. The portal remained open until 7 August 2020. The CAC received more than 600 forms and over 200 emails via the Community Input Portal. After the Community Input Portal was closed at midnight on 7 August 2020, Independent Counsel established a website (www.huntsvillepolicereview.com) that allowed citizens to upload video footage or other images from the protest events that occurred in Huntsville from 30 May 2020 to 5 June 2020. We discuss the website in greater detail below.

In addition to the electronic method available to the public to provide information, the CAC scheduled public listening sessions for individuals to share, in person, their concerns directly with the CAC. The listening sessions were held on 12 August 2020 from 5:00–8:00 p.m. and 28 August 2020 from 10:00 a.m.–1:00 p.m. Residents who wanted to speak directly to the CAC regarding police actions during the protest events were encouraged to sign up for a five-minute speaking slot through Independent Counsel’s website. Any remaining slots on the date of the listening session were available for sign up at the hearing on a first-come, first-served basis. The CAC held listening sessions in the City Council Chamber, which was the optimal location to hold the hearings and comply with social distancing guidelines. Additionally, the City Council Chamber was equipped with video equipment that allowed the CAC to broadcast on HSV-TV and to live-stream the sessions on the City of Huntsville website and the CAC Facebook page.

C. Organizational Listening Session

In addition to the two public listening sessions for individuals, the CAC also held a live public listening session for groups to share their concerns with CAC. The CAC held the organizational listening session on 17 September 2020 from 5:00–8:00 p.m. The organizational listening session used the same format and location as the individual listening sessions except organizations were given a fifteen-minute presentation slot and were allowed to use audio/visual equipment to supplement their presentations.

D. Description of listening sessions

1. August 12 and 28, 2020, Public Listening Sessions for Individuals

A total of twenty-one individual speakers participated in the public listening session on 12 August 2020, and twenty-seven speakers participated on August 28. Many of the speakers signed up for a time slot on the website in advance and the others signed up at the listening session. At the conclusion of the initial sets of five-minute presentations for each speaker, the CAC permitted the individual speakers additional time to present until the time expired for each session—8:00 p.m. on August 12 and 1:00 p.m. on August 28. In addition to their oral presentations, some of the individual speakers brought photographs and other demonstrative items to recount their experience at the protests.

The participants on August 12 were John Price, Shawn Estes, Catherine Hereford, Terri Cavender, Brooke Justice, Tahirih Osborne, Maurice Shingleton, Lee Ellenburg, Rita Burkholder, Lisa Gardener, Chad Chavez, Paige Martin, Russell Stanners, Bob Baccus, Aaron Byers, Ava Caldwell, Blake Enfinger, Dean Gillmore, Josh Roberts, Damar Thomas, and Lindsey Louque.

The speakers on August 28 were Geneva Saint, Eva Lichay, Emily Heflin, Jessica Johnson, Henry Turner, Cindy Seeley, Cara Greco, Carrie Coan, Joshua Heard, Karen Reed, Lakin Crump, Tricia Murray, Hall Bryant, Jr., Beth Moore, Chad Chavez, Bob Baccus, Doug Seay, Shawn Estes, Jordan Steelman, Emma Steelman, Angela Curry, Susan Fultz, John Greco, Lindsey Louque, Christopher Smalley, Maurice Shingleton, Jr., and Clifton Officer.

2. September 17, 2020, Public Listening Session for Organizations & Groups

A total of six organizations or groups participated in the public listening session on 17 September 2020. The presenters were Angela Curry and Claudia Mesnil (Citizens Coalition for Criminal Justice Reform); Lyle Voyles (Community Watch Coordinator and President of the Chafee Neighborhood Association); Aladin Beshir (Interfaith Mission Service); Latoya Piper (Lions Pride Securities); Mark Prill (Green Mountain City Association Committee); and Lindsey Louque (unnamed support group for participants in the June 1 and June 3 protests).

3. Summary of issues that individuals and groups presented

The individuals and groups discussed a number of issues regarding the protests. Some of the presenters were not present at the protests but participated in the listening sessions to voice their concerns about law-enforcement actions at the protests; some presenters voiced support for law enforcement. Those that had been present at the protests voiced complaints about law enforcement's conduct. Specifically, the presenters complained about law enforcement's dispersal of the

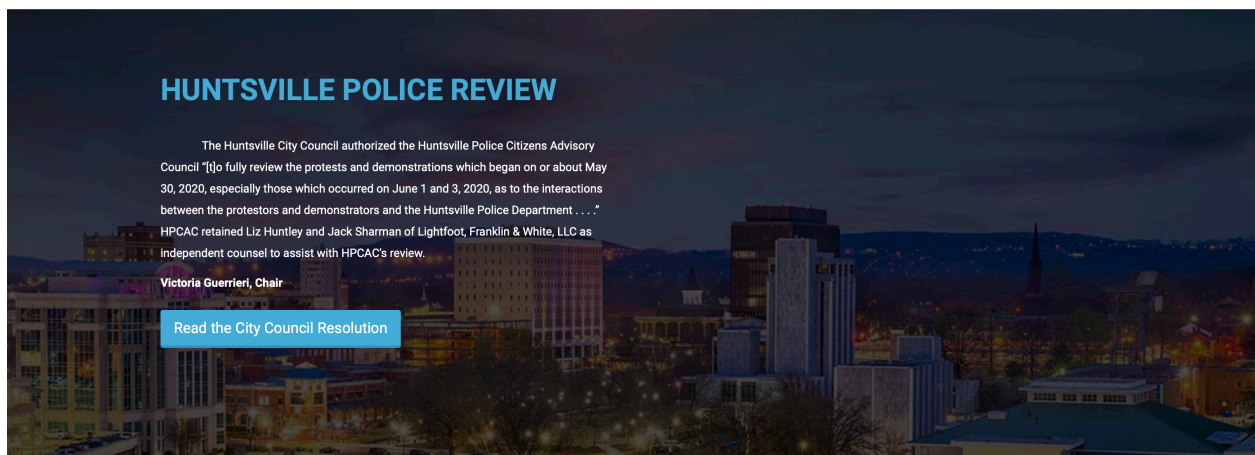
crowd with chemical agents (smoke, OC, etc.), rubber bullets, and “bean bags.” Some of the presenters described injuries to themselves and others from rubber bullets. The presenters described the law-enforcement presence as intimidating and unnecessary because they observed snipers on rooftops using their rifles as spotters towards the crowd, drones overhead, and law enforcement in full riot gear. The presenters discussed their inability to hear instructions from law enforcement and the confusion regarding the dispersal of the crowd. In addition to complaints about law enforcement’s conduct, some of the groups presented policy recommendations for HPD. The full transcripts of the listening sessions are posted on Independent Counsel’s website.

II. INDEPENDENT COUNSEL’S INITIAL WORK

A. Uptake of Public Submissions Through Independent Website

Before the Public Listening Sessions and Organizational Listening Sessions were complete, the CAC established an online input form to allow the public to submit comments about the Floyd protests. The input form was open from 7 July 2020 to 7 August 2020, and available at <https://huntsvilleal.seamlessdocs.com/f/HuntsvillePoliceCitizensAdvisoryCommittee>. Over 750 comments were uploaded using the input form.

[Home](#) [Citizens Advisory Council](#) [Independent Counsel](#) [Schedule](#) [Public Upload](#)



Huntsville Police Review Website

Independent Counsel also established a website, separate from City or HPD systems, at <http://huntsvillepolicereview.com>. Through this independent website, the public could upload photos and videos. The website went live on 5 August 2020; the last photo or video submission was on 9 November 2020. Submissions through the input form and the independent website provided the CAC and Independent Counsel with additional testimony to consider and evaluate.

Certain types or lines of comments appeared repeatedly. Many comments, for example, showed support for the Huntsville Police Department. Several comments stated that Mayor Battle should resign. Some commenters said they thought that the June 3 protest would end at 8:00 p.m. Other comments showed that some demonstrators knew the end-time for the protest was changed to 6:30 p.m., but those comments additionally indicated the end-time of the protest was only changed around 2:30 p.m. or 3:00 p.m.—just a few hours before the protest was supposed to begin.

Other categories of comments emerged during the CAC’s and Independent Counsel’s review. We highlight four broad categories here: (1) lack of clear exits and protester violence, (2) citizen-officer interactions, (3) inability to hear LRAD or megaphone directions, and (4) use of force. This summary does not reflect the entire universe of comments received. The CAC and Independent Counsel take no position on the veracity of the allegations made in the public submissions unless otherwise addressed in this Report.

1. Lack of Clear Exits and Lack of Protester Violence

Many commenters noted that there were no clear exits from the protests. Despite officers telling protesters to leave, officers also prevented protesters from leaving. Several comments claimed protesters were not being violent; rather, officers initiated the violence. Many comments also claimed that protesters could not hear any orders to disperse and that law enforcement gave no warning before releasing gas. Another line of comments consistently submitted spoke against the purported violence that Chief McMurray cited as a reason to justify Huntsville Police Department’s actions. Many commenters disagreed with Chief McMurray’s cited justifications, believed them to be false, and claimed the protests were peaceful.

2. Citizen-Officer Interactions

Other comments recalled specific moments of positive interactions with law enforcement officers. For instance, one comment said that an officer was seen giving aid to a protester. Another comment stated that there was a lieutenant who was nice, spoke to protesters, and even took photos with them. Another commenter stated that an officer aided a young child who was suffering from the smoke deployed in Big Spring Park, but that protester did not see any other officer provide aid to anybody at any time.

Some comments also described less helpful interactions with officers. According to one comment, a civilian asked three officers what the officers’ orders were and when protesters “needed to leave to avoid being caught in a bad situation.” The response of all three officers were “I don’t know.” When the civilian asked if they could find out, all three of them said “no.” Another person stated he or she

heard Antifa would be at the protest, so they called HPD to inquire. HPD responded that they were just rumors.¹¹

3. Inability to Hear LRAD or Megaphone Directions

Some comments also went into more detail about the inability to understand what officers were saying. One comment described a protester standing across the street from an officer speaking into a megaphone. Though the protester could see the officer and was just across the street, and the protester could hear a sound coming from the officer's megaphone, the protester could not understand what the officer was saying. Another person claimed to see the LRAD but could not hear what was being said. Another comment recounted that a participant in both the June 1 and June 3 protests emailed Chief McMurray and the City Council on June 2, informing them that people could not hear what was being said on June 1. The same audibility issue presented itself on June 3.

4. Use of Force

Many comments uploaded to the input form described personal observations of the use of force by officers. One protester stated he or she saw people pushed to the ground by police and another person shot in the face with less-lethal rounds. Another comment stated that a protester's friend was hit with a baton while running away with his back to HPD officers. The protester turned around to see why the friend was hit, and the officer picked the baton off the ground and started chasing the protester as the protester was leaving. Another comment said officers were heard making comments like "can't wait to gas you." An additional comment stated people were pepper sprayed while going to their cars and claimed that someone was removed from their car and sprayed. One commenter claimed his or her friend's head was grazed by a can of tear gas when it was thrown into the crowd.

Some comments also discussed the use of the less-lethal rounds fired from shotguns. One commenter claimed to suffer nerve damage from being shot with a less-lethal round. The commenter stated that someone else had six pellets in her leg that needed to be removed at the hospital. A different comment stated that a less-lethal round was lodged in a woman's leg for a day and that an older woman was shot six times. Other comments also claimed that media personnel were harmed during the protests.

¹¹ This response is curious given Chief McMurray's presentation claiming identifiable evidence of Antifa sympathizers.

B. Information Requests to and Responses of Certain Agencies and Entities

In any review or investigation, access to documents and witnesses is critical if the investigator wishes to determine not only what is *supposed* to happen but what *actually* happened, and why. Policies, mission statements, and press releases can shed light on the organization, but such materials rarely reveal the granular detail of events—especially when those events are disputed—or the intent of individuals within the organization as they carry out their jobs. An illustration outside the municipal law-enforcement context may be helpful.

If a corporation receives troubling news—a grand jury subpoena, for example, or a notice from the federal Securities and Exchange Commission (the “SEC”) that the corporation is the subject of a securities fraud investigation—it may hire outside counsel to conduct an internal investigation so that the Board of Directors may take appropriate action; the government’s concerns can be dealt with (hopefully); and disclosure of material information be made to investors. The outside lawyers will collect documents, including digital records; interview current or former employees with knowledge of, or who had a possible role in, the events that caused (in our example) the receipt of the grand jury subpoena or the letter from the SEC; and will likely prepare a report.

In this review, we received from HPD, through the City, documents and a great deal of video (mostly BWC video). We were unable to interview any line police officers involved in the Floyd protests. The only member of HPD who submitted to an interview was Chief Mark McMurray. While the CAC and Independent Counsel appreciate Chief McMurray’s interview, and found his remarks interesting and helpful, his lone interview is insufficient. A Chief-only interview without line officers in a law-enforcement review would be analogous, in our example above, to a CEO-interview only, without speaking with employees in the accounting, or contracting, or shipping departments (depending on the subject matter of the government inquiry). We were not able to examine officers about critical matters peculiar to them—intent, orders (as they perceived them), training, munitions, communications with protesters (as the officers perceived those communications). HPD’s intransigence on this point is unfortunate for HPD itself: our guess is that, had we been able to interview officers who responded to the Floyd protests on June 1 and June 3, the officers may have been able to offer background and insight that would have been favorable to HPD.

We requested information from the following agencies and entities: (1) HPD; (2) the City; (3) Madison County and MCSO (collectively, “Madison County”); (4) Madison City and Madison Police Department (collectively, “Madison”); and (5) the Alabama Law Enforcement Agency (“ALEA”).

1. Preservation Letters

Between July 29 and August 3, 2020, Independent Counsel sent “preservation” letters to all of these agencies and entities.¹² Independent Counsel asked HPD and the City to preserve all documents and materials relating to, addressing, discussing, documenting, or otherwise touching upon the protests and upon HPD’s and the City’s preparation for and response to the protests. Similarly, Independent Counsel asked all of the other entities to preserve all documents and materials relating to, addressing, discussing, documenting, or otherwise touching upon the protests and the entity’s preparations for or responses to the protests or the entity’s participation in the preparations or responses in conjunction with the HPD or the City.

2. Requests for Production

On 3 August 2020, Independent Counsel sent Requests for Production to all of the agencies and entities identified above.¹³ With the exception of HPD and the City, each entity or agency received the same nineteen Requests for Production, which sought items such as incident/offense and arrest reports; documents concerning complaints, calls for service, or officer-initiated activity relating to the protests; radio traffic relating to the protests; documents showing officer’s use of force; documents showing what background information or intelligence the entity received in preparation for the protest; as well as other various documents relating to the protest. Independent Counsel additionally asked HPD to produce all documents, presentations, slideshows, reports, or other demonstratives prepared or published by HPD relating to or created in response to the protests or at the request of the City. The City was asked to produce documents touching on the hiring, retention, training, and disciplining of employees or other employment topics for HPD; all video and audio recordings relating to the protests; and documents discussing video retention.

On 22 January 2021, we sent a second Request for Production to HPD and an Open Records Act request to Madison County pursuant to Code of Alabama section 36-12-40.¹⁴ In the follow-up request to HPD, we asked the Department to produce a list of all less-lethal munitions or projectiles (beanbag rounds, rubber balls or pellets) and all chemical agents, devices, or equipment (OC, CS, smoke) in its custody or control as of June 1 and 3, 2020. We asked Madison County to produce all records identifying the quantity and type of chemical agents, less-lethal

¹² All preservation letters are collected at Exhibit A.

¹³ The Requests for Production are collected at Exhibit B.

¹⁴ The Second Request for Production and the Open Records Act request are collected at Exhibit C.

munitions, projectiles, and devices (e.g., beanbag rounds, rubber balls or pellets) MCSO purchased for the last five years and used on June 1 and 3, 2020.

3. Follow Up Letters

We did not receive a response regarding our initial preservation letters or Requests for Production from anybody. On August 21, Independent Counsel sent all of the involved entities and agencies follow-up letters providing them a courtesy reminder that their responses were expected no later than 2 September 2020.¹⁵

On September 4, Independent Counsel sent a follow up letter to HPD because HPD still had not produced any documents.¹⁶

4. Responses

a. *Huntsville Police Department*

i. THE MOU THAT GOVERNS THE MATERIALS THAT THE CITY AND HPD PRODUCED TO THE CAC

The document requests to HPD became the subject of much discussion and some contention between and among the CAC, Independent Counsel, the City, and HPD, resulting in a “memorandum of understanding” (or “MOU”) that governs the custody of documents provided and limits their use in this Report.

On behalf of HPD, the City expressed concern over the breadth and detail of the items we sought. HPD undertook and completed the laborious task of copying more than 300 hours of BWC video. It also undertook the search for responsive documents. Mindful of the privileges and protections available in civil discovery—that is, in lawsuits—to the City and HPD, those entities understandably wished to circumscribe production of materials to a scope more in line with the scope available in litigation. The City and HPD also wished to maintain privacy, privilege, work-product, and any other protections available. The parties had numerous discussions about these matters but made modest progress towards a resolution.

Independent Counsel proposed and the City and HPD accepted an MOU to govern the production of documents. The MOU was entered into on 23 September 2020.¹⁷ In pertinent part, the MOU provides:

In order to maximize the statutory and other protections provided to City employees, including privacy protections, as well as to retain and

¹⁵ This follow-up correspondence is collected at Exhibit D.

¹⁶ This follow-up correspondence is Exhibit E.

¹⁷ Exhibit F.

not waive whatever other privileges and rights are or may be available to the City or City employees, the City retains and expressly does not relinquish custody and ownership of the materials. The City and HPD retain the right to object to production of any materials requested by the CAC or Independent Counsel.

Thus, the MOU was consistent with the Resolution’s intent that the CAC would have access to any resources at the Huntsville Police Department, including access to employees involved and documentary evidence, provided that the employees would retain constitutional and procedural protections. Further, because the produced materials still belong to HPD and the City, within thirty days of the City Council hearing at which this Report is presented, the CAC must either return all the materials to the City or certify that all the material in Independent Counsel’s possession has been destroyed. Because neither the CAC nor Independent Counsel is the “custodian” of the documents produced, no documents produced by HPD or the City are attached as exhibits to this Report (unless a document is available from another source).

ii. HPD’S RESPONSE FOLLOWING THE MOU

On 24 September 2020, HPD produced certain documents and other information requested. It did not produce documents in certain categories, although it is unclear whether, for some of the categories of requested documents, the documents were not produced because they do not exist or because they exist but HPD (or the City) simply refused to provide them.¹⁸ HPD produced over 1,800 hard copy pages, mostly consisting of emails touching on various topics such as June 3 post-protest briefing notes, the NAACP rally against police brutality operations plans, intelligence for the June 3 protest, damaged police vehicles, and the Citizens Coalition for Criminal Justice Reform’s requests for police reform. HPD also produced an electronic copy of departmental policy directives and more than 314 hours of video footage.¹⁹

¹⁸ HPD did not produce documents on the following categories: reports or materials documenting officer’s use of force, with the exception of a list of munitions expended; records documenting the training of officers who used force; employees authorized to provide training for certain uses of force; and statements from interviews with people involved in any incidents arising out of the protests.

¹⁹ Our review of video is set out in greater detail *infra* at pages 39–54. The video universe provided by HPD consisted of video from BWCs, from UAVs, and from dashboard cameras. A significant majority of the video provided was BWC video. We also requested any video recordings captured by devices owned, operated, installed, or monitored by the City (*e.g.*, webcams installed by the City) that recorded, documented, or relate to the Floyd protests. (First Requests for Production Request Number 2). We were informed that such video was not available.

On 11 February 2021, HPD produced a list of munitions expended on June 1 and 3.

On 2 March 2021, HPD produced the NAACP's Application for a permit to protest on June 3, the first and second drafts of the June 3 permit, the signed June 3 permit, and an inventory of chemical munitions. Notably, the first draft of the June 3 permit allowed the protest to be held in Big Spring Park East and the Courthouse Square. The second draft and the signed permit did not include the Courthouse Square.

b. *City of Huntsville*

On 12 September 2020, the City produced documents explaining the City's hiring procedure, telework policy, application process, benefits and compensation, promotional procedures for certain positions in law enforcement, and its Personnel Policies and Procedures Manual. The City did not otherwise provide responsive documents.

c. *Madison County and the Madison County Sheriff's Office*

Madison County and MCSO did not respond to any of our letters or requests for production until 4 February 2021. On that date, the two entities sent Independent Counsel a letter asserting that the requested public records fell under a disclosure exemption in Code of Alabama section 36-12-40 for "records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures . . . the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare."²⁰ The letter also broadly asserted that the same statute exempted from public disclosure records which "would otherwise be detrimental to the best interests of the public." However, the letter did not explain how our requested records fell under those exemptions. On 24 February 2021, Independent Counsel responded with a letter to Madison County and MCSO explaining how the exceptions do not apply to the records the CAC requested. Independent Counsel reminded the County and MCSO that Alabama citizens have a right to inspect public records; that production of the records would benefit the public interest; and that Code of Alabama section 36-12-40 favors the production of public records, with the burden of proving an exemption being on the entity invoking the exemption.²¹

²⁰ This correspondence is collected at Exhibit G.

²¹ This correspondence is collected at Exhibit H.

Independent Counsel followed up on 22 March 2021.²² Madison County and MCSO did not produce any materials.

d. *City of Madison and Madison Police Department*

The Madison City and MPD responded by letter on 2 September 2020.²³ Their letter stated that nine officers assisted MCSO but did not produce any further information. Madison City and MPD asserted that law enforcement investigative notes and recordings are privileged and protected from disclosure. Their letter further asserted that disclosing information on law enforcement methods and techniques and officer’s identities would be detrimental to the public.

Independent Counsel followed up on 22 March 2021.²⁴ There was further email correspondence with Madison City during the last week of March when Madison City asked for a draft of the Report to help determine whether to produce documents and what documents, if any, they would produce. Independent Counsel responded that the CAC would not release a draft of the Report and asked Madison City to produce the documents that Independent Counsel requested on 3 August 2020.²⁵ Madison City and MPD did not produce any materials.

e. *Alabama Law Enforcement Agency*

ALEA responded to the CAC’s requests by letter, enclosing only its “Department of Public Safety Policy and Procedure Manual,” on 2 September 2020.

ALEA stated that its troopers did not use force or make any arrests but were only involved in “traffic control” during the protests. ALEA further stated that it was “unclear whether ALEA Troopers issued any protest-related tickets However, it would be unduly burdensome and vexatious for ALEA to undertake such a review, as ALEA does not maintain ticket information in a manner conducive to such a search.” Finally, ALEA stated its “response to [the request for production asking for documents on officers’ use of force] drives responses to a majority of the other questions, which ALEA will formally answer in the coming days.”²⁶ ALEA never provided the promised formal answers.

Independent Counsel followed up on 22 March 2021.²⁷

²² This correspondence is collected at Exhibit I.

²³ This correspondence is collected at Exhibit J.

²⁴ This correspondence is collected at Exhibit K.

²⁵ This correspondence is collected at Exhibit L.

²⁶ This correspondence is collected at Exhibit M.

²⁷ This correspondence is collected at Exhibit N.

C. Interview Requests and HPD Refusal

1. Timeline

Following Independent Counsel’s initial review of the documents, video, and other materials, the review shifted to interviews—specifically officer interviews. Beginning in early November 2020, we asked HPD to make officers available for interviews.²⁸ On 10 November 2020, Independent Counsel and the CAC Chair met with the City Attorney and HPD to discuss the proposed method of interviewing HPD officers and any concerns held by HPD or the City.²⁹ After a series of written correspondence, emails, and telephone discussions, on 23 November 2020, HPD declined to make officers appear for interviews with Independent Counsel. As discussed below, HPD claimed to lack the authority to compel officers to speak with the CAC or Independent Counsel, but HPD allowed officers to voluntarily meet with us.³⁰ On 7 January 2021, Independent Counsel provided HPD with a list of officers the CAC and Independent Counsel wished to speak with, and HPD agreed to notify those officers.³¹ No officers stepped forward to speak with the CAC or Independent Counsel.

2. HPD’s Refusal to Compel Officer Interviews

a. *The Utility of Officer Interviews*

With any investigation or review, witnesses with first-hand knowledge can be the best sources of information. This review was no different. As discussed elsewhere, the CAC and Independent Counsel gained much insight from interviews with members of the public and other attendees of the events on June 1 and 3. These individuals provided valuable information: they described what happened and they explained issues and events that may have been on video or other media but lacked context or clarity. The CAC and Independent Counsel were unable to interview a key group of witnesses—Huntsville police officers. This review of the civil unrest last summer is the only one of which we are aware where the investigators requested but were not allowed to speak with the law-enforcement officers “on the ground” and involved in the events. This lack of transparency was and remains troubling; is based on an unwise policy and questionable legal analysis by the City and HPD; and is inconsistent with the letter and spirit of the Resolution.

²⁸ Correspondence with the City and HPD regarding officer interviews is collected at Exhibit O.

²⁹ *Id.*

³⁰ *See id.*

³¹ *Id.*

b. *The City’s Position and Rationale*

No HPD officers, with the exception of Chief Mark McMurray, met with Independent Counsel or the CAC. As discussed above, the CAC lacks subpoena authority and cannot compel officer testimony (or anyone’s testimony, for that matter). HPD and the City took the position that, under HPD personnel policies, they could not order any employees to be interviewed by the CAC or Independent Counsel. The City Attorney’s Office and HPD expressed concern that providing officers for interviews could give the compelled officers a basis for a claim against the City that forcing their statements to the CAC—an “outside,” non-departmental entity—would violate HPD human resources policy; that statements by officers could increase the likelihood of disciplinary action against them for matters irrelevant to the Floyd protests; that officers’ statements could create adverse evidence against officers or the City in civil litigation; and that the offered precautions would not provide adequate criminal legal protection for officers. These concerns are understandable but wrong.

Why are the City and HPD wrong? Two legal mechanisms provide protections to officers—(1) the *Garrity* protections under federal law and (2) the Alabama statute that makes law-enforcement testimony confidential. Both mechanisms are available in this review—or would have been available, had we been allowed to use them. We made every effort to interview officers under conditions that would trigger these protections. HPD and the City declined.

c. *Overview of Garrity*

The Fifth Amendment to the United States Constitution provides a privilege against self-incrimination.³² That privilege allows a person to refuse to answer official questions that may be incriminating.³³ A nuanced framework applies this privilege in the context of public employees, like the police officers here, when they are asked to provide statements about the performance of their duties. This framework arises from a United States Supreme Court case called *Garrity v. New Jersey*.³⁴

In *Garrity*, the New Jersey Attorney General investigated several police officers for allegedly “fixing” traffic tickets.³⁵ The officers were interviewed during the investigation, and each officer was warned “(1) that anything he said might be

³² “No person shall . . . be compelled in any criminal case to be a witness against himself” U.S. CONST. amend. V.

³³ See *Erwin v. Price*, 778 F.2d 668, 669 (11th Cir. 1985) (quoting *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973)).

³⁴ 385 U.S. 493 (1967).

³⁵ *Id.* at 494.

used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office.”³⁶ In other words, the officers were given an impossible choice: either answer the questions that were potentially incriminating or refuse to answer and be fired. Out of fear of losing their jobs, the officers answered the questions, and prosecutors used the answers against the officers in subsequent criminal cases.³⁷

The Supreme Court held that putting the officers in this dilemma violated the Fifth Amendment, which “prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all [public employees], whether they are policemen or other members of our body politic.”³⁸ Public employees, like any other citizens, retain their privilege against self-incrimination, but they “subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights.”³⁹

Garrity and the cases that follow it are sometimes difficult to apply, but there is a three-part bright-line rule from the case: (1) a police officer can be compelled to provide testimony or statements about his or her conduct as part of an administrative investigation of that conduct; (2) the officer can be disciplined or fired if they refuse to do so; and (3) any statement provided by the officer arising from the threat of serious discipline, however, cannot be used later as evidence to prosecute the officer criminally.

d. *Garrity Would Have Protected HPD Officers in Their Interviews*

The CAC’s task under the Resolution, through Independent Counsel’s efforts, was to review the events of June 1 and 3 and HPD’s involvement in those events.⁴⁰ The CAC is not the HPD officers’ employer, even though the CAC, invested with the authority of the Resolution, was seeking an account of officers’ performance of their duties.⁴¹ Thus, in order to provide *Garrity* protections for officers against self-incrimination, HPD or the City would have to order the officers to give statements about the officers’ activities during the Floyd protests, and the City or HPD would have to make clear that failure to provide a truthful statement could result in serious discipline up to and including termination. This course of action would have

³⁶ *Id.*

³⁷ *Id.* at 495.

³⁸ *Id.* at 500.

³⁹ *See Uniformed Sanitation Men Ass’n v. Comm’r of Sanitation*, 392 U.S. 280, 284 (1968).

⁴⁰ Res. 20-487, City Council, Reg. Sess. (Huntsville, Ala. June 25, 2020).

⁴¹ *See Uniformed Sanitation Men Ass’n*, 392 U.S. at 284–85.

yielded compelled statements contemplated by *Garrity* and, as a result, would have prevented the statements from being used to criminally prosecute the officers at a later date. The officers would have been protected.

e. *Alabama Law Would Have Made HPD Officers' Testimony Confidential Except in Limited Circumstances*

Alabama has a statute that makes certain reports and statements of and by law enforcement confidential and not subject to public disclosure.⁴² The statute reads, in part:

- (a) Neither law enforcement investigative reports nor the testimony of a law enforcement officer may be subject to a civil or administrative subpoena except as provided in subsection (c).
- (b) Law enforcement investigative reports and related investigative material are not public records. Law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings are privileged communications protected from disclosure.
- (c) Under no circumstance may a party to a civil or administrative proceeding discover material which is not authorized discoverable by a defendant in a criminal matter. Noncriminal parties may upon proper motion and order from a court of record: Secure photographs, documents and tangible evidence for examination and copying only by order of a court imposing such conditions and qualifications as may be necessary to protect a chain of custody of evidence; or protect the prosecutors', law enforcement officers', or investigators' work product; or to prevent the loss or destruction of documents, objects, or evidence. Such discovery order may be issued by a court of record upon proof by substantial evidence, that the moving party will suffer undue hardship and that the records, photographs or witnesses are unavailable from other reasonable sources.⁴³

Subsection (a) applies to this review.⁴⁴ It protects “testimony” of law-enforcement officers from disclosure or discovery. “Testimony” is a legal term,

⁴² See ALA. CODE § 12-21-3.1.

⁴³ *Id.*

⁴⁴ Subsection (b) is not available in this investigation. The statute protects “[l]aw enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings.” Because neither the CAC nor Independent Counsel qualify as “law enforcement,” it is not credible to contend that this Report, or any statements given during the review, is covered by the statute.

connotating formalized statements made under oath, such as depositions or affidavits.⁴⁵ Subsection (b) addresses investigative reports, witness statements, or notes created by law enforcement. Again, “law enforcement officer” is a specific term, defined as a government agent tasked with maintaining public order, making arrests, and investigating offenses.⁴⁶ Finally, subsection (c) states that materials not discoverable in a criminal case would not be discoverable in a civil or administrative proceeding.⁴⁷ The Alabama Rules of Criminal Procedure do not permit the discovery of internal reports made by prosecutors or law enforcement officers or statements made by prosecution witnesses.⁴⁸

These protections are not insurmountable because a civil litigant—for example, someone suing the City or an officer—may discover, by court order, certain materials if the litigant presents evidence of undue hardship and that the statements are not available from other sources.⁴⁹ That said, courts place a high burden on this showing, requiring the requesting party to present actual proof of its difficulties and not just conclusory statements.⁵⁰

f. *Applying the Statute to Interviews of HPD Officers*

To provide protection under this statute, an interview of any HPD officer would likely have to be under oath and before a court reporter. Admittedly, such a structure would formalize the interviews and increase the consequences to officers for any false statements. On the other hand, such transcribed “testimony” would enhance the statutory protections over the officer’s statements and would make it unlikely that they would later be publicly disclosed or subject to discovery in civil proceedings.⁵¹ In order to become discoverable in civil litigation, a litigant would again have to prove to a court that he could not obtain the same information

⁴⁵ See Garner, Bryan A., and Henry Campbell Black. “Testimony.” In *Black’s Law Dictionary*. Westlaw. St. Paul, MN: Thomson Reuters, 2019; cf. Crawford v. Washington, 541 U.S. 36, 52 (2004) (citations omitted) (identifying examples of “core class” of testimonial statements).

⁴⁶ See *Ex parte Ala. Dep’t of Mental Health & Retardation*, 840 So. 2d 863, 867–68 (Ala. 2002) (citing ALA. R. CRIM. P. 1.4(p)).

⁴⁷ ALA. CODE § 12-21-3.1(c).

⁴⁸ See ALA. R. CRIM. P. 16.1(e).

⁴⁹ ALA. CODE § 12-21-3.1(c).

⁵⁰ See, e.g., *Ex parte Ala. Dep’t of Mental Health*, 840 So. 2d at 868–69. Of note, Independent Counsel has not found any cases interpreting this statute under the circumstances raised in this Report. Accordingly, Independent Counsel is not aware of the Alabama Supreme Court (or any Alabama court) having spoken on this issue definitively.

⁵¹ See ALA. CODE § 12-21-3.1(a).

through other reasonably available means (e.g., deposition) *and* that he would face “undue hardship” without the statement taken by Independent Counsel.⁵²

g. *The CAC Wanted HPD’s Cooperation for Officer Interviews*

Independent Counsel was sensitive to the concerns raised by HPD and the City Attorney. Obviously, Independent Counsel wanted to gather information from HPD officers—the women and men on the ground— while minimizing their exposure to collateral liability, to the extent appropriate and possible. To that end, Independent Counsel offered to interview officers under the following conditions:

- HPD Administration would order officers to be interviewed by Independent Counsel about the officers’ knowledge of the events on June 1 and 3, 2020;
- HPD Administration would advise the officers that failure to answer questions could result in serious disciplinary action, such as termination of employment;
- The officers would be placed under oath by a court reporter or notary public for the interview; and
- The officers’ interviews would be transcribed to preserve the testimony.

Compelling the officers’ interviews would have provided their statements heightened legal protections. HPD, through the Office of the City Attorney, declined to compel any officers to meet with the CAC and Independent Counsel for an interview.⁵³ The City took the position that it lacked the authority to force HPD to compel such statements, and compelling the statements may still waive the officers’ Fifth Amendment protections.⁵⁴ On the contrary, HPD plainly has such authority and *Garrity*, post-compulsion, assures no waiver.

HPD offered to make officers aware that Independent Counsel and the CAC would like to interview any willing HPD officer, and HPD did not forbid any officers from voluntarily speaking with Independent Counsel.⁵⁵ Independent Counsel also provided a list of names of HPD officers that Independent Counsel specifically

⁵² *Id.* at § 12-21-3.1(c). Again, Independent Counsel has not been able to locate an Alabama appellate decision addressing this issue, so this conclusion is Independent Counsel’s opinion based on its interpretation of the Alabama statute.

⁵³ Exhibit O.

⁵⁴ *See id.*

⁵⁵ *Id.*

wished to speak to based on information gathered in the investigation.⁵⁶ Independent Counsel agreed to interview officers or take their statements without the formality of placing the officers under oath.⁵⁷ Perhaps not surprisingly, because HPD did not require them to do so, no officers—other than Chief McMurray—agreed to an interview with Independent Counsel and the CAC.

h. *This Report Lacks Testimony from Useful Witnesses: HPD Officers on the Ground.*

This Report is devoid of firsthand accounts of officers who were closest to the relevant events. We do not know their side of the story; we do not know their particular training (or lack thereof); we do not know the orders they were given (or, more importantly, their understanding of the orders they were given); and we do not know their perception or their intent. We do not know what they believe they did well or how they think they could do things differently or better next time.

D. Gathering and Use of Intelligence

To further our review, Independent Counsel and the CAC sought to learn how HPD gathered, analyzed, and utilized information and intelligence in preparing for and responding to the Floyd protests. To do so, we reviewed documents HPD provided, reviewed Chief McMurray’s 18 June 2020 presentation to the City Council, and interviewed Chief McMurray.

HPD relied on open-source information (social media and news reports), tips and rumors provided from individuals, and law-enforcement bulletins to gather and assess information in advance of the June 1 and June 3 events. Most, if not all, of this intelligence analysis was conducted within NAMACC, the collaborative center of public safety agencies that provides intelligence and technical support for eleven counties in north Alabama. Personnel from various departments including HPD, MCSO, Decatur Police Department, and the FBI staff NAMACC (whether full-time or as needed). On the days of the actual incidents, members of Alabama Law Enforcement Agency (“ALEA”), Huntsville Fire-Rescue (“HFR”), and Huntsville Emergency Medical Service, Inc. (“HEMSI”) also manned NAMACC.

In the hours and days leading up to each event, NAMACC monitored national news regarding protests and unrest in cities around the country—Minneapolis, Atlanta, Louisville, and others. Many cities experienced public turmoil resulting in

⁵⁶ *Id.* The requested officers were not identified because of any perceived misconduct. Rather, Independent Counsel believed the officers either were eyewitnesses to key events or possessed relevant information.

⁵⁷ While this informality would have reduced some of the legal protections against disclosure, this accommodation was made in the interest of fairness and equality because citizen-witnesses were not placed under oath. Independent Counsel also made the offer in the interest of exhausting options for speaking with officers.

injuries, property damage, and significant law-enforcement response.⁵⁸ In addition to news reports, social media was a source of information regarding public outcry and calls to action—political, demonstrative, or criminal—and NAMACC monitored the number of “likes,” “shares,” and attendees for identified posts and events. In his 18 June 2020, presentation to the City Council, Chief McMurray pointed to several social media posts as evidence justifying HPD’s preparations for and tactics in response to the Floyd protests. Additionally, HPD received tips and information from members within the community. The tips included reports that groups were coming from outside of the Huntsville area and that hardware stores had been bought out of certain supplies—rocks, bricks, lumber, or acids. Finally, in preparation for the June 3 event, MCSO deputies canvassed the downtown area and supposedly located staged items such as bricks or other weapons.⁵⁹ Some evidence suggests, however, that some bricks were placed near one downtown business as part of a repair or renovation project. Law enforcement also documented posters or banners instructing people how to prepare against police tactics (such as teargas).

Before each Floyd protest, NAMACC emailed updates to administration offices for HPD, the City, MCSO, and the FBI. The information was then disseminated to commanders and supervisors within HPD in advance of the events. A pre-event briefing appears to have been held before the June 3 event in order to share information with line and unit supervisors, but it is not clear what topics were discussed in this briefing. Equally unclear is what information HPD command staff or NAMACC shared with other officers or how they shared any information with the officers.

During the event, HPD and NAMACC continued monitoring social media and live news reports; assessed video feeds from UAVs⁶⁰ and undercover officers embedded within the event; and collected reported observations from officers. This information was received and assessed by the analysts from the various agencies within NAMACC, then command staff from HPD and other agencies directed resources based on these assessments.

E. Video

Another source of information that the CAC and Independent Counsel relied on was the BWC footage, dash camera footage, surveillance footage, drone footage, and other footage that HPD produced. On 24 September 2020, HPD produced over

⁵⁸ As discussed more below, some of those responses also resulted in reviews similar to this one.

⁵⁹ McMurray, Mark. “Presentation on HPD’s Response to Protests.” *City of Huntsville*. Address presented at the Huntsville City Council Special Session—June 18, 2020. <https://www.huntsvilleal.gov/videos/huntsville-city-council-special-session-june-18-2020/> (“McMurray Presentation”).

⁶⁰ According to Chief McMurray, HPD has the largest UAV law enforcement team in the state, his officers are trained and licensed for UAV flight, and he has certificates from the FAA that permit flight in certain areas of the city.

300 hours of video concerning the June 1 and June 3 protests, and Independent Counsel reviewed the video. To make this review more manageable, Independent Counsel focused on identifying common fact patterns and occurrences in the available video, including the environment, use of force, officer-citizen interactions, command structure, tactics, arrests, and other significant protester and officer activity. Below are general summaries, a timeline, and specific highlights regarding the video footage Independent Counsel reviewed for June 1 and June 3.

At the outset, Independent Counsel and the CAC again reiterate the limitations to their video review. While a helpful tool, police videos are not “all seeing.” They can only capture the images in front of them. Explanations from witnesses present for the events are helpful to clarify what the video shows. While Independent Counsel and the CAC were able to interview some members of the public, we were not able to interview the officers wearing the cameras. Explanation from officers may have clarified or contextualized some of the events.

In deference to the Memorandum of Understanding between the CAC and HPD, the Report cannot contain any pictures or “screenshots” of videos that HPD produced.

1. June 1

a. *General Comments*

Multiple officers commented that the protesters were peaceful, not violent, and not damaging any property. One sergeant stated the protest was “not even all that rowdy for a protest.” Of note, however, HPD detained one individual and arrested another for carrying firearms at the protest on this day. Throughout the protest, the protesters conducted various chants: “Breonna Taylor,” “George Floyd,” “I can’t breathe,” “f**k the police,” “no justice, no peace,” and “take a knee.” Some video showed some protesters approached officers individually and asked them to take a knee. A vast majority of the officers that responded to the requests stated that it is against their policy to take a knee and they were not allowed. However, one officer told a protester that officers were allowed to take a knee, but the officers would not be able to pay attention to the situation and any potential dangers.

Many officers could be heard agreeing that the protest was very peaceful but that they did not want to leave the protesters in the streets once it became dark. The same sergeant who said the protest was “not even all that rowdy for a protest” also said he thought that the situation would get bad if HPD started pushing protesters out and showing force while the crowd is peaceful. Notably, some footage indicated that the Sheriff made the decision that protesters needed to leave the courthouse.

Video shows that Madison County Sheriff Kevin Turner and Chief Mark McMurray declared the event an unlawful assembly and made the decision to disperse the crowd. Available video also sheds light on HPD's and MCSO efforts to disperse the protesters from the downtown area, including Big Spring Park, after Sheriff Turner and Chief McMurray declared an unlawful assembly. Announcements to disperse started at approximately 7:25 p.m. After the crowd did not disperse following the announcements, law enforcement employed various methods, including the use of officer movement, smoke, gas (CS), pepper spray (OC), and less-lethal ammunition.⁶¹

b. *General Timeline*

At 5:00 p.m., protesters were marching down Jefferson Street toward Clinton Avenue. By 5:55 p.m., the protesters had stopped marching and gathered in front of the Madison County Courthouse. Madison County Courthouse has two set of stairs leading from the Jefferson Street sidewalk to the courthouse. Between the top of the stairs and the doors to enter the courthouse is a landing where people can walk around. The bottom of the courthouse stairs facing Jefferson Street had a line of sawhorse barricades at the bottom of the lower set of stairs and “Do Not Cross” tape at the bottom of a second upper set of stairs to keep protesters off the stairs and landing surrounding the Courthouse. Based on the After Action Report that HPD created, the barricades and tape were placed by MCSO deputies. HPD officers and Madison County deputies wrapped around the landing at the top of the stairs surrounding the courthouse on the Jefferson Street side and Fountain Circle side. At 5:55 p.m., a handful of protesters walked past the barricades, walked to the top of the stairs, and took a knee in front of the officers. Officers told the individuals to go back downstairs. Except for the person who first walked past the barricades, all the protesters kneeling at the top of the stairs returned to the sidewalk. HPD detained the remaining protester and then handed him to MCSO deputies—presumably for arrest.

At 6:30 p.m., HPD detained a man for having a firearm at the protest. Officers explained to him that Alabama law⁶² prohibits carrying a firearm at a protest. The officers confiscated his weapon, gave him a business card to retrieve his firearm later, then released him.

⁶¹ While it is known that both HPD and MCSO deployed chemical agents on June 1, the video does not show which agency deployed which canister of chemical agents. Since Independent Counsel was not able to interview officers, we were unable to determine which agency deployed which specific chemical agents at which time.

⁶² See ALA. CODE § 13A-11-59.



HPD IRT

According to HPD's After Action Report, HPD called in their Incident Response Team ("IRT") and Special Weapons and Tactics ("SWAT") team because the small group of protesters breached the barricades. The BWC shows IRT approached the courthouse and lined up behind uniformed HPD officers and MCSO deputies at the courthouse at 6:40 p.m.⁶³ A group of HPD officers talking among themselves stated this was probably the worst time for IRT to appear. About three minutes later, Mayor Tommy Battle, who was already standing at the landing around the courthouse facing Jefferson Street, took a knee on the courthouse steps in front of the crowd, and the crowd started loudly cheering. A HPD sergeant instructed IRT officers on how to handle the protesters. The sergeant told IRT that the protest had been relatively peaceful, but there were a few agitators and protesters who were going to "talk s**t" and "say stuff." The sergeant further instructed, "Do not flinch. Do not move. Do not do anything. Do not smile." After Mayor Battle took a knee, the crowd started chanting, "Walk with us." Mayor Battle began to walk with the crowd, and the crowd cheered loudly. Shortly after Mayor Battle started walking with the crowd, an officer said on the radio that the march had gotten off the allowed track. Officers then tried to re-direct the protesters back to the approved route.

Just before 7:00 p.m., Chief McMurray arrived at the protest. A HPD supervisor or commanding officer told IRT that if they have to arrest someone, they need to hand the individual to the arrest team. At 7:14 p.m., a HPD sergeant told IRT that Chief McMurray and Mayor Battle would soon declare the protest an unlawful assembly. The sergeant told IRT that "once that announcement is made, IRT will march down the stairs on both sides of the courthouse" at the corner of Madison and Fountain Circle, form an L, and push the crowd out. The sergeant

⁶³ The IRT consists of two Lieutenants, six Sergeants, and thirty-nine Officers. The unit is divided into five 7-member squads, and four grenadiers. Huntsville Emergency Medical Services, Inc. ("HEMSI") has four paramedics assigned to the unit. *See generally* HPD 2019 Annual Report at 51.

reminded IRT that protesters were supposed to be done at 6:00 p.m. and repeatedly admonished IRT to maintain self-discipline.

Between 7:25 p.m. and 7:31 p.m., there were multiple announcements over HPD's LRAD directing attendees to leave. Sheriff Turner and Chief McMurray advised attendees—particularly people with children—to leave. At this time, there were a handful of protesters at the top of the steps of the courthouse. Most of the protesters started to get off the stairs and go back toward the street when the orders to leave were given. One protester did not leave, so HPD detained him and turned him over to MCSO deputies. The loud 'siren' function on the LRAD was used multiple times between 7:25 p.m. and 7:31 p.m. Around 7:25 p.m., MCSO deputies began to move down the stairs of the courthouse. At 7:30 p.m., Sheriff Turner told an HPD official to make one more order to leave on the LRAD and then MCSO would have "to do our thing." Sheriff Turner then discussed his plan to disperse the crowd with an HPD officer. At 7:31 p.m., another LRAD announcement was made: "One last time. Peaceful disbursement." However, as several publicly submitted comments stated—and what BWC video from certain officers supports—people may not have been able to hear the LRAD depending on where they were standing. HPD's After Action Report discussed the crowd noise: "[T]he noise level was so loud that it was very difficult to hear conversations, any radio traffic or cell phone communications."

Around 7:30, IRT, with HPD officers in standard police uniforms behind them, began marching down the courthouse stairs in a synchronized manner, while pushing their arms and batons forward—even before making contact with the protesters—and chanting, "Move back!" HPD officers in standard uniform and IRT first contacted protesters near the bottom of the courthouse steps and cleared the protesters off of the steps and away from the courthouse. The officers then stopped at the plastic barricades at the bottom of the courthouse stairs and the sidewalk on Jefferson Street. Officers used the LRAD siren again. At 7:32 p.m., the LRAD siren was still in use, and IRT resumed pushing the protesters back, knocking some protesters to the ground in the process. Some officers helped protesters that were pushed down; other officers continued to push protesters while the protesters were still on the ground or trying to stand back up.

Next, officers formed two lines in front of the courthouse, taking the shape of an L to push the crowd north on Jefferson Street. One line of officers was facing north on Jefferson Street and one line was on the sidewalk facing west. The line facing west contained both HPD officers and MCSO deputies. Some protesters began to sit in the street.



Representation of L Formation and Protesters' Location

Officers continued to use the LRAD siren to encourage the crowd to disperse. On certain BWC footage, a message can be heard on officers' radios relaying that they are "about to deploy smoke. If that doesn't work, we'll move to OC."⁶⁴ The radio traffic does not state which agency is going to deploy smoke, but the list of Munitions Expended shows HPD did deploy smoke on June 1. After this announcement, officers began putting on their gas masks. Around 7:40 p.m., another LRAD announcement ordered protesters to leave and to come back on Wednesday, June 3, for the NAACP's protest.

Officers remained in the L formation and continued pushing protesters northbound on Jefferson Street. According to the After Action Report, the plan was to leave protesters two routes to exit: down the stairs to Big Spring Park East or north on Jefferson, then west on Spring Street toward Spragins Street. At 7:45 p.m., smoke was deployed and protesters started running away. Four minutes later, HPD deployed gas and Chief McMurray announced, "It's not smoke this time." Between 7:45 p.m. and 7:52 p.m., there were multiple announcements made over the LRAD at Madison and Fountain Circle telling people to disperse, and the siren was used multiple times. Officers stopped pushing protesters at 7:52 p.m.

After this, some protesters left the area, but others relocated to Big Spring Park East. HPD officers regrouped at the top of the stairs that lead from West Side Square into the park. A HPD supervisor or commander told IRT and other HPD officers that "there are several protesters who have retreated into the park for a tactical rally point, so come with me, the grenadiers, and we're going to run them out." At 7:55 p.m., IRT and other officers in standard uniforms began to move into Big Spring Park East. Once inside the park, IRT and HPD officers in regular uniform formed a line and began to move toward the protesters in the same synchronized march used on the courthouse stairs, chanting, "Move back," while

⁶⁴ HPD did not produce separate audio to the CAC. Where we mention "audio" in this Report, unless otherwise attributed, we refer to sound that accompanies a video recording.

pushing their arms forward. Gas was deployed in the park, and, as a result, a small part of the grass in the park caught on fire at 8:05 p.m. IRT and HPD officers continued to advance on the protesters and push them through the park toward Church Street. At the same time, both gas and smoke continued to be deployed in the park. At 8:10 p.m., IRT completed pushing the crowd out of the park and into the road on Church Street. Based on the footage we reviewed, the street did not appear closed to vehicular traffic.

Officers regrouped at 8:19 p.m. in order to relocate to Franklin and Jefferson Street to disperse another group of protesters.⁶⁵ Officers were instructed to prepare their OC “foggers”—containers of OC with a handle that are designed for use for crowd control—and arrest three or four people. A HPD supervisor or commander directed IRT to go to Franklin and Jefferson to push those “sons of bi**hes out.” He then told an officer to get his fogger and said HPD is “going to march up there, line up,” and the officer with the fogger “is going to empty his whole f**king can of OC. Then we’re going to snatch about three or four of them that we’ve got charges on. Whoever is the biggest loudmouth that we’ve got charges on, that’s the sons of bi**hes y’all grab.”

Once IRT regrouped on Church Street, outside of Big Spring Park East, at 8:21 p.m., they were told to give protesters only one warning. IRT began to try to push and disperse the crowd but apparently decided to fall back into Big Spring Park. IRT regrouped to discuss dispersing the crowd and was told if protesters “don’t move, spray them.” IRT formed a line to cross Church Street and started moving toward the remaining crowd, repeatedly yelling, “Move!” While the IRT line was moving toward the crowd, OC was deployed. Protesters threw water bottles and garbage cans toward officers. None of the items hit any of the officers (most of the items did not land anywhere near them). Officers discharged less-lethal rounds at two protesters throwing trash cans toward officers. One of the rounds was discharged after the protester was running away and hit the protester in the back.

At 8:30 p.m., the IRT regrouped and withdrew from the park. By this point, HPD was allowing people to walk around the South Side Square by the Madison County Courthouse.

c. *Specific Observations*

i. POSITIVE INTERACTIONS

The video showed some positive interactions between HPD and the protesters. One video shows a white male in the crowd hugged one of the officers.

⁶⁵ While the BWC clearly depicts the officer says Franklin and Jefferson based on the video, Franklin and Jefferson Street run parallel to each other and would never intersect.

Other body camera footage shows a civilian asking a sergeant if there is any way to de-escalate the situation because she was scared, and the sergeant gave her a hug.

ii. INCONSISTENCIES OR UNSUPPORTED CLAIMS

Some claims of protesters throwing objects at officers appear unsupported. For instance, when officers were standing at the intersection of Jefferson Street and Clinton Avenue, an officer was yelling that protesters were throwing rocks. The BWC footage from this officer, however, does not show any rocks being thrown or any of the officers reacting to rocks being thrown, such as by ducking, moving to the side, or making any reaction at all. The officer who claimed rocks were being thrown stood still while stating it and did not appear to react to the alleged thrown rocks. A protester subsequently yelled, “That’s bulls**t. Nobody is throwing rocks.” Later, officers discussed radio reports that protesters were throwing rocks and bottles at patrol cars. However, two officers said they did not see anyone throwing rocks, though the suspects may have run off before the officers arrived.

At 7:27 p.m., at the intersection of Madison and Fountain Circle, a white male was arrested for having a gun at the protest. A discrepancy exists between the arrest report and what the arresting officer’s BWC video shows. The arrest report states that the individual pointed the gun at officers. On video, however, the officer says several times that the individual was just holding the gun and not pointing it at anyone. Additionally, no available video shows the suspect point the gun at anyone.

iii. CONFUSION

Officers often would not let protesters walk in certain directions to leave. At one point, a group of officers did not let a Black male walk past the officers to get to his car, then later they did let two white males go through. Protesters commented to the officers about this seeming double standard. However, video shows that the two white males may have been members of the media.

iv. OFFICERS’ FRUSTRATIONS, USES OF FORCE, AND APPARENT INDIFFERENCE

Officers discussed among themselves how HPD responded to the protest. One officer complained to two other officers that someone in HPD “was begging our chief to give us orders to get on our knee and told the Chief that the protest would be done if we took a knee.” In response to that, one of the other officers said, “I’m not bowing, that’s like bowing!” A captain was also heard telling a group of officers, “You can’t allow lawlessness. Minneapolis let them take over their streets. You want to protest? Then it’s all good. I heard we did gas, and you don’t allow lawlessness. You do not tolerate it, do not accept it.”

The captain then pointed to one of the officers recording and said:

You see my post on the news. I don't give a . . . I'm up for general and I tell them 'read my Facebook, motherfu**ers.' I don't give a God d**n. I don't care what color you are . . . You show respect to me, I'll show some respect to you . . . Put your hands on me, and I'm going to change the channel from HBO to Showtime. Throw some s**t at me

The captain then asked if the officers he was talking to had their body cameras on. Officers then said, "Hold on," and turned their cameras off.

In other video, officers talked with each other about the force they used or should have used. For instance, one protester was seen walking away slowly and arguing with officers after being told to leave. A group of officers made fun of another officer for not spraying the protester. The officer being made fun of said he did not spray the protester because he was moving, but he did have his pepper spray out.

Later, an officer talked about the people he shot with less-lethal rounds. He said the first protester threw a garbage can, and he shot that protester "low," then the protester went into his backpack and threw a bottle. The officer confirmed the bottle was not glass and subsequently shot him three more times. The officer stated that he shot the person in the face. After the officer stated he confirmed the bottle was not glass, he then told another HPD officer that the protester was throwing glass bottles out of his backpack. Due to the inability to interview officers, we were not able to talk to this officer about this discrepancy. One officer was heard saying he hopes the protest is shown on the news and people realize they cannot play around in Huntsville because "they don't play nice in Huntsville."

Multiple clips showed officers in forceful contact with protesters. An example of this was seen when officers moved forward on the courthouse stairs while chanting "move back."⁶⁶ A female officer in IRT gear, who was previously seen pushing a protester down, ended up pushing another protester down. On BWC footage, two protesters were on the ground after being pushed down. The female officer dove on a female protester who was already on the ground. A sergeant grabbed the female officer off of the protester. A captain and the sergeant tried to hold back the officer, but she was still pushing protesters. The sergeant then pushed two protesters that were already on the ground, so one of the protester's female friends pushed the sergeant, and the sergeant pushed her back. The protester then got to her knees and pushed the sergeant, and the sergeant pushed her back down. At that point, multiple protesters and officers were struggling on the ground. A HPD officer helped one of the protesters get off the ground after this struggle and the protesters involved walked away.

⁶⁶ See the discussion of this "Offensive Movement" in the discussion of HPD policy directives, *infra*, on pages 81–82 and 88–89.

In Big Spring Park, an officer pulled out his OC spray and sprayed protesters in the face. The people started walking away, but the officer continued to spray them. One person, still walking away with his back toward the officers, was sprayed again. This protester took off his shirt and told the officer that he ruined his shirt with the spray. The officer responded by pulling his taser out. The protester dropped his shirt and started to run away. A different officer then yelled, "Hey!" to the protester. The protester reacted by turning around to face the officer, the officer looked at the protester, turned, and sprayed his shirt that was on the ground.

HPD had opportunities to provide aid to protesters in need but did not do so. In Big Spring Park, a protester limping with his friend asked an officer where to go. The officer said, "To your car." The protester told the officer his friend rolled his ankle. The officer did not offer medical attention and told the protesters to keep walking. Later, an officer was talking to three protesters. One of the protesters collapsed and fainted in front of the officers, but none of the officers assisted him. The protesters were struggling to help their friend off the ground, but the friend kept falling over. The officer who was speaking to the protesters audibly laughed at them, did not offer any help, and did not offer to call for any medical help.

2. June 3

a. *General Comments*

Similar to June 1, numerous videos depicted officers talking amongst themselves and discussing that the protesters were peaceful. However, around 7:10 p.m., HPD and MCSO declared the protest an unlawful assembly, and HPD began efforts to disperse protesters, first by warnings, then officer movement; then by smoke, gas, and less-lethal rounds. At one point in the night, a window at the Kaffeeklatsch was broken, but the BWC footage does not show when this occurred. The available video footage of June 3 also evidenced significant assistance from both ALEA and MCSO in handling the protest and later dispersing protesters.

Video also showed that HPD's approach to dispersing protesters constantly shifted, particularly toward the end of the events recorded. At various points, different HPD supervisors and officers told other HPD officers that if protesters were leaving, not to arrest them and let them leave. However, throughout the night, many protesters asked officers if they could leave in a certain direction because their cars were close and they were trying to leave. Officers frequently told protesters "no" and told them to keep following the direction of the crowd. Within the same hour that HPD arrested several protesters near Big Spring Park, BWC footage shows HPD abandoned its plan for IRT to remove its gear and return to arrest remaining protesters. Instead, HPD decided to deny protesters points of exit, and then arrest only those protesters who officers could apprehend before running away. HPD's original plan for officers to get into their cars, drive down to the intersection of Lowery and Williams, and start grabbing people was abandoned.

According to the HPD's After Action Report, twenty protesters were arrested, and one sergeant was listed as the arresting officer on all twenty arrest forms. This is consistent with what BWC footage shows.

Certain transparency issues also came to light in videos regarding the June 3 protests. For example, the video footage showed that officers did not know with what crimes to charge the arrested protesters. Multiple videos showed that numerous officers' badge numbers were covered with a black band.⁶⁷ Many officers' BWC footage also had substantial gaps in time—it was not uncommon for an officer to have a period of twenty minutes or more without any BWC footage available. Noticeably, one sergeant's BWC recordings had a two-and-a-half-hour gap (approximately 4:32 p.m. to 7:11 p.m.). Some officers also had objects obstructing their camera or were facing to the sky rather than directly in front of them.

b. *General Timeline*

On June 3, before the scheduled rally, HPD officers conducted a bomb sweep in Big Spring Park and around the Madison County Courthouse. At the beginning of the protest, officers also checked the bags of protesters. HPD officers told protesters they could bring in water and sealed bottles of milk but not weapons, tools, any open bottles of milk, spray bottles, or chemicals—even if protesters claimed they were for combating the effects of tear gas. Some protesters offered to drink their open bottles of milk to show they were safe, but officers still did not let the bottles in.

Around 7:05 p.m., protesters marched northbound on Jefferson Street, then turned eastbound on Clinton, and eventually turned north on Washington. Throughout the night, protesters chanted the same things they chanted on June 1: “George Floyd,” “Breonna Taylor,” “I can’t breathe,” “f**k the police,” “no justice, no peace,” etc.

At approximately 7:08 p.m., a large group of HPD's IRT officers emerged from a parking garage under the courthouse and lined up on the intersection of Madison and Fountain Circle. About one minute later, HPD made an announcement on the LRAD that the protest was deemed an unlawful assembly, all civilians were ordered to go home, and civilians had five minutes to clear the area. HPD also made announcements on the LRAD when there was four minutes and two minutes left to leave. According to HPD's After Action Report for June 3, the plan was to have MCSO make announcements to leave using the LRAD at the top of the courthouse steps and HPD would use their LRAD to give announcements to disperse as well. Between 7:14 p.m. and 7:22 p.m., HPD made multiple LRAD announcements

⁶⁷ This is also a common practice for law enforcement mourning a police officer killed in the line of duty.

stating the protest was an unlawful assembly, ordering the crowd to leave, and when there were two minutes and one minute left to disperse.

Based on the BWC footage that we reviewed, people may have had trouble hearing the LRAD based on where they were standing. For example, BWC footage from an officer on Clinton and Jefferson showed it was hard to hear the LRAD at that intersection. Other BWC footage showed that officers standing on one end of the Madison and Fountain Circle intersection may have heard the LRAD better than officers standing on the opposite end of the same intersection. The After Action Report stated, “The noise level was so loud that it was very difficult to hear radio or cell phone communications.”

At 7:18 p.m., law enforcement officers went on “code orange.” At that time, officers started to put on gas masks. Some of the officers kneeled when they put on their gas masks, causing protesters to cheer and take pictures. Based on the radio traffic, officers were “waiting for 47 to go code orange”—presumably meaning to disperse the crowd or to deploy smoke or gas. The radio traffic stated that “once that happens, we’ll re-evaluate the situation.” The response on the radio was, “protesters have moved away from the Courthouse and have been moved to the two corners and the protesters are not doing anything. Crowd has dissipated a bit and gotten out of the streets.” At 7:23, HPD started using the LRAD siren for short periods to get protesters to leave.

Around 7:33 p.m., one HPD officer told other HPD officers at Madison and Fountain Circle that the plan was to have “IRT push from the right to the HPD line, then the HPD line will take half the group or whoever comes to the left and IRT will push the rest.” HPD then used the LRAD siren for over a minute at Madison and Fountain Circle. A HPD officer then told other HPD officers a different plan, stating: “County is going to push them [the protesters] to us. We’ll push them downhill, then they’ll push the rest of them.”

At 7:48 p.m., at Madison and Fountain Circle, HPD made another announcement from the LRAD telling protesters to leave and that it is an unlawful assembly. Some BWC footage again indicated that some people may not have been able to hear the LRAD based on where they were. At 7:54 p.m., some protesters threw a few water bottles at an ALEA SUV that drove through the crowd. Between 7:54 p.m. and 8:02 p.m., chemical agents were deployed by law enforcement multiple times.⁶⁸ At 7:58 p.m., approximately twenty ALEA vehicles drove through the intersection of Madison and Fountain Circle with their lights and sirens on in

⁶⁸ While it is known that both HPD and MCSO deployed chemical agents on June 3, the video does not show which agency deployed which canister of chemical agents. Since Independent Counsel was not able to interview officers, we were unable to determine which agency deployed chemical agents at which time.

an effort to get protesters to leave. After the ALEA vehicles passed, protesters stepped back in to the street.

At this point, IRT formed a line and started approaching protesters as a unit in riot gear, chanting “move back.” Despite a noticeable amount of space between officers and the protesters, one HPD officer started spraying the entire crowd with OC, even as protesters backed up. The officer sprayed the crowd from left to right and additionally aimed over the front row of people to spray people in the back. Between 8:02 p.m. and 8:05 p.m., HPD made further announcements to disperse, deployed a substantial number of chemical agents, and fired a large amount of less-lethal rounds. There were also distraction devices—devices that emit a loud bang and bright flash—used to get protesters to leave.

Officers pushed many members of the crowd to Clinton and Jefferson. Based on the video available, it appeared that over 100 protesters were pushed to this area, with only two HPD officers available to monitor the situation. Most of the protesters continued walking, but some lingered in the area. Around 8:06 p.m., at the intersection of Clinton and Jefferson, a protester threw a traffic cone and it hit a parked HPD patrol vehicle and an HPD officer. The officer hit with the cone reported that he was bleeding, and BWC footage indicated a head wound. The officer’s partner reported the large crowd via radio and further reported that his vehicle’s windshield was hit with a brick and shattered. Later video showed that the windshield was damaged, but not shattered.

The video also showed that the two officers were told via radio to leave the area. The officer that was hit with the cone elected to stay put and began yelling at the nearby crowd. The partner of the officer who was hit later told other officers that he was trying to hold back the officer and leave, but the officer that was hit with the cone “was trying to fight the whole crowd by himself.”

About five minutes after the above-mentioned incident, an HPD officer at Clinton and Jefferson requested permission to use chemical agents to disperse protesters if the protesters do not follow their orders to leave. The response the HPD officer received was to “try spray first.” Three minutes later, a HPD supervisor announced over the LRAD or a megaphone to officers that the use of gas and OC was authorized. One officer stated, “If anybody is not moving, feel free to get your OC out.”

Over at Big Spring park, a crowd of approximately fifty to 100 people formed by the pond. At 8:37 p.m., protesters yelled at officers that they could not hear what the officers were saying. One sergeant turned toward the megaphone and yelled, “how about turning the f**king volume up?” Protesters repeated that they could not hear what the officers were saying. Another officer’s video shows that the person operating the megaphone was giving orders to disperse. At the same time, officers

were told over the radio that people were taking the fire extinguishers in the Clinton Avenue parking garage and spraying the extinguishers in the stairwells.

Smoke and gas were launched multiple times in Big Springs Park between 8:42 p.m. and 8:46 p.m. Over a megaphone, a HPD supervisor told IRT and HPD officers in regular uniform to push protesters through the park and to the street. A HPD officer told other officers to shoot people with less-lethal munitions if people try to pick up gas cannisters.

After pushing protesters through the park, a captain informed officers that the plan was to have IRT get out of their gear, come back, then arrest the remaining protesters. However, this plan was seemingly abandoned, as IRT did not leave the scene. Ten minutes later, a HPD commanding officer explained to fellow officers that they were attempting to trap protesters and deny all points of exit. At 9:24 p.m., while IRT was lined up on the sidewalk outside of Big Spring Park facing Williams and Lowery, a HPD officer reported that deputies were rounding up protesters and would push them to HPD. The officer told a sergeant to arrest everyone they can touch, which a nearby captain agreed with, saying, “It’s kind of chicken s**t, but you know.” An officer responded with “all is fair in love and war.”

At 9:32 p.m., HPD made a final push, leaving the park and entering the parking lot across the street, chanting, “move back,” while moving toward the protesters. HPD arrested some protesters upon making contact, and the rest of the crowd ran away.

c. *Specific Observations*

There were some specific events revealed in officers’ body camera footage that merit discussion as well.

i. OFFICERS’ COMMENTS ON HOW HPD HANDLED THE PROTESTS

Some of these items include various officers’ comments about how HPD handled the June 1 and 3 protests. One officer said June 3 went better than June 1, and the rest of the officers he was talking with disagreed. One officer said June 1 went better than June 3, and he added, “Well, some of the stuff was messed up.” Officers also stated that they were never trained to move the way they did on June 1. Another officer said HPD was not prepared for June 1.

ii. USE OF GAS

Regarding the use of gas, an officer was heard on camera telling protesters it was up to Madison County and MCSO whether to use gas. Officers were also heard talking amongst themselves saying they had no warning of when gas was going to be deployed. One sergeant stated, “The County doesn’t need help. They’re throwing sh*t like it’s going out of style.” A video showed a sergeant and an ALEA trooper

saying the crowd “was a flighty crowd” and left before the protest was over. The sergeant said, “They probably thought they were about to get gassed” and continued to say he “wouldn’t put it past the Sheriff’s department.”

iii. USE OF FORCE AND HPD’S COMMENTS ON THE FORCE USED

Video revealed other conversations about HPD’s use of force and potential callousness in its use. One HPD officer told another that HPD had been “CS’ing like a motherf**ker.” One HPD sergeant who had a less-lethal shotgun on June 3 stated that he did not remember how many rounds he fired that evening. Twenty minutes before making that statement, he said he fired ten rounds. Notably, the sergeant stated the first five were finned “T&E” rounds and that he “could drive nails with them.”⁶⁹ The rest of the rounds were beanbags. Another HPD officer was heard a few minutes later stating that HPD needs a rubber-bullet machine gun.

Another video shows an officer asking another group of IRT officers if they were the arrest team. One HPD officer in the IRT group responded, “no, we f**k people up.”

Other video footage showed a protester who was being treated by HEMSI. The protester claimed that she was shot in the back of the leg with less-lethal rounds five times while she was walking away from officers. One video showed a protester talking with a HPD officer. The protester stated she was sprayed and the officer asked the protester, “Was it worth it?” The protester’s response was that she was running away and not near officers, but officers decided to spray anyways. The protester further stated she could not hear what was being said and she could not go anywhere. In another video, a HPD sergeant sprayed a protester with OC, even though the protester was simply standing and looking at officers. The sergeant was later heard telling an officer that the sergeant “hosed the crap out of that skinny white guy.”

Other acts of force observed or discussed on video included an officer recalling running up to a protester that was walking away and simultaneously recording video on her phone; while smiling, the officer described she ran up to the girl, pulled the girl by her neck, and threw her on the ground. A separate video showed an officer chase a protester trying to get into a car and pin the protester on the ground. The officer turned off his body camera while appearing to comment about how hard he hit the protester.

⁶⁹ Independent Counsel believes “T&E” rounds are “test and evaluate” rounds – rounds that HPD purchased or were given a small amount of in order to “test and evaluate” them before HPD determines if HPD wants to purchase a larger supply of those rounds.

iv. PROTESTER-OFFICER INTERACTIONS AND ARRESTS OF PROTESTERS

Several videos also show protester arrests and protester-officer interactions. Multiple videos show a protester asking a group of officers if excessive force was necessary while the protest was peaceful. An officer walked closely toward her, she asked him not to and stated she felt threatened. The rest of the officers circled her, and the protester repeated her feeling of being threatened. The footage available did not reveal how the officer responded to the protester, but the protester is heard saying, “Could you say that louder? You said you’re glad I feel threatened?” The officer who initially approached the protester grabbed for her phone, and the protester moved her phone away from the officer and continued backing away from officers, but the officer kept grabbing at the phone. The surrounding officers were still watching and started yelling “Hey! Hey!” as if trying to get the first officer’s attention, but the first officer kept trying to grab the phone.

Some videos available also depict the arrests of protesters. For example, immediately before HPD’s final push on the remaining protesters in the parking lot across from Big Spring Park around 9:30 p.m., a protester walking away from the crowd is told to turn around and go back to the crowd, despite telling officers that he was walking toward his car. He was subsequently arrested after rejoining the crowd for failure to disperse.

Another video showed someone arrested when it was not clear whether they were a part of the protest. In the video, an individual is seen in his car in the parking lot across the street from the park and scrolling through his phone. HPD officers knocked on his car window and ordered him to get out of the car. The individual repeatedly asked why he was being ordered to exit his car and received no response. He was then placed under arrest without being given a reason, despite repeated requests. About two minutes later, and after asking over ten times why he was being arrested, he was told he was arrested for failure to disperse.

F. Subject-Matter Expert

To supplement their work, the CAC and Independent Counsel engaged former police chief Johnnie Johnson, Jr., as a subject-matter expert for this review based on his experience with handling multiple high-conflict protests as both a police chief and an officer. Chief Johnson received a B.S. degree in criminal justice from the University of Alabama at Birmingham. He is also a graduate of the FBI National Academy and the National Executive Institute. Chief Johnson has more than thirty-five years of law enforcement experience, and he served as the first Black police chief for the City of Birmingham. After retiring as police chief in 1997, Chief Johnson was called out of retirement to serve as police chief for the cities of Bessemer (2002–2003) and Brighton (2009–2012). Additionally, on 13 May 1999, Chief Johnson was appointed to the Alabama Board of Pardons and Paroles, and he served as its chairman from June 2000 to October 2001.

Chief Johnson has been an active member of multiple professional organizations: the National Organization of Black Law Enforcement Executives (“NOBLE”) (founding member), the International Association of Chiefs of Police (“IACP”), Birmingham Guardians Association (organizer, former president and treasurer), and Leadership Birmingham (1984 graduate). He is also the recipient of many awards: Police Officer of the Year, Excellence Citizen’s Award, Community Service Awards, Police Outstanding Achievement, Man of the Year (1993), NAACP Honors Award (1998), the NOBLE Award for Outstanding Contributions and Years of Dedicated Service (2019), and the Southern Christian Leadership Conference (“SCLC”) Keeper of the Dream Award (2019).

As both an officer and the chief for Birmingham, Chief Johnson oversaw multiple marches or protests within the city—including contentious events similar to the Floyd protests in Huntsville. Based on his experience, Chief Johnson believes that communication and planning are essential to how a city handles the collective tension, expectations, and feelings of its citizenry.

In 1992, for example, a group of white separatists applied for a permit to hold a march and rally in downtown Birmingham. Since the events occurred via a City of Birmingham permit, the Birmingham Police Department (“BPD”)—supported by the Jefferson County Sheriff’s Office and Alabama State Troopers—was responsible for protecting the public, controlling the crowd, and preventing property damage.

With intelligence that counter-protesters were planning to attend the march, Chief Johnson understood that communication and planning were essential to prevent escalation. First, BPD communicated directly with the event organizers regarding the time, place, and manner of the event. Specifically, the starting point and ending point for the event was established as well as where the protesters would park. BPD used other safety measures, such as fencing and barricades, to separate protesters from counter-protesters. BPD also communicated to the public regarding the location of onlookers (onlookers were restricted from interfering with the movement of a parade or march). The event concluded without violence or rioting.⁷⁰

Chief Johnson attributes the non-violent conclusion of the march and rally to (1) communications with participating law enforcement agencies to establish that the City of Birmingham was responsible for the event; (2) communications with the protesters regarding the details and timeline of the event; (3) putting structural barriers in place to direct the event; and (4) communications with the public. Our recommendations reflect his input.

⁷⁰ “White Separatists March in Alabama.” *The New York Times*, June 14, 1992. <https://www.nytimes.com/1992/06/14/us/white-separatists-march-in-alabama.html>.

G. Legal and Policy Overview

In addition to factual development and expert consultation, we engaged in thorough analysis of pertinent legal issues and relevant policies and practices. The two primary topics are (1) policing in the context of the First Amendment right to free speech and assembly and (2) HPD’s policies and procedures with regard to use of force. The goal of these exercises was neither to identify potential liability for HPD or its officers nor to opine on potential violations of legal rights—because doing so is outside the purview of this review. Rather, we sought to provide insight into the relevant (and sometimes arcane) issues that have given rise to much concern.

1. The First Amendment and “Unlawful Assembly, “Failure to Disperse,” “Disorderly Conduct” and Other Important Concepts

This portion of the Report should provide a general overview of relevant provisions of the United States Constitution and Alabama law with respect to public assemblies and protests, constitutional systems of permitting public protests, and means of dispersing public events lawfully. However, this section is not intended to, and does not express an opinion, as to whether the Huntsville Police Department acted constitutionally in dispersing the protests occurring in Huntsville, Alabama, on June 1 or 3, 2020.

Group demonstrations are a core right of the American people. “An individual’s freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.”⁷¹ The Supreme Court of the United States consistently has ruled against government officials applying criminal statutes—such as disorderly conduct, breach of the peace, or obstructing public passage—to suppress constitutionally protected assemblies.⁷² “The court also has consistently held that a state may not unduly suppress free communication of views . . . under the guise of conserving desirable conditions.”⁷³ However, not all assemblies in public places are constitutionally protected, and the right of free speech and assembly “do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.”⁷⁴ Equally, the right to associate is “not absolute.”⁷⁵

⁷¹ *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

⁷² *See Brown v. Louisiana*, 383 U.S. 131, 142 (1966); *Cox v. Louisiana*, 379 U.S. 536, 558 (1965); *Edwards v. South Carolina*, 372 U.S. 229, 237 (1963).

⁷³ *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940).

⁷⁴ *Cox v. Louisiana*, 379 U.S. at 554.

⁷⁵ *Roberts*, 468 U.S. at 623.

a. *What Speech is Protected? What Speech is Not?*

The First Amendment to the United States Constitution’s protections extend to individual and group speech “in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”⁷⁶ Speech not only encompasses “pure speech” (the spoken word) but also conduct-based expression like picketing and parading.⁷⁷ Although, pure speech generally is afforded greater protection than conduct-based expression.⁷⁸ For example, when an assembly takes the form of mass demonstration or occurs on public streets and sidewalks, “the free passage of traffic and the prevention of public disorder and violence become important objects of legitimate state concern,”⁷⁹ and “[a] group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations.”⁸⁰

The law generally protects speech unless it falls within a category of unprotected speech—that is, types of speech that, within reason, may be regulated because of their content.⁸¹ Below is a brief discussion of some relevant types of constitutionally protected and unprotected speech.

i. POLITICAL SPEECH, IDEOLOGICAL SPEECH, AND SPEECH ON PUBLIC CONCERNS

Speech addressing issues like “politics, nationalism, religion, or other matters of opinion” has long been one of the most protected forms of speech.⁸² The U.S. Supreme Court “has recognized that expression on public issues ‘has always rested on the highest rung of the hierarchy of First Amendment values’”⁸³

Notably, “peaceful agitation for a change of our form of government is within the guaranteed liberty of speech”⁸⁴ unless it is combined with incitement or

⁷⁶ *Roberts*, 468 U.S. at 622.

⁷⁷ *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 152 (1969); *Cox v. Louisiana*, 379 U.S. at 555.

⁷⁸ *Cox v. Louisiana*, 379 U.S. at 555; *Handley v. City of Montgomery*, 401 So. 2d 171, 180 (Ala. Crim. App. 1981). *Shuttlesworth*, 394 U.S. at 152 (1969).

⁷⁹ *Handley*, 401 So. 2d at 180–81 (citing *Walker v. City of Birmingham*, 388 U.S. 307, 316 (1967)). “Governmental authorities have the duty and responsibility to keep their streets open and available for movement.” *Cox v. Louisiana*, 379 U.S. at 554-555.

⁸⁰ *Cox v. Louisiana*, 379 U.S. at 555.

⁸¹ *R.A.V. v. St. Paul*, 505 U.S. 377, 382–86 (1992).

⁸² *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁸³ *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982).

⁸⁴ *Herndon v. Lowry*, 301 U.S. 242, 259 (1937).

attempts to incite insurrection or violations of valid laws.⁸⁵ To that end, “[t]here is no question . . . that the State may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means.”⁸⁶

ii. SPEECH RELATED TO FORCE AND VIOLENCE, FIGHTING WORDS, THREATS, AND SPEECH “INTEGRAL” TO CRIMINAL CONDUCT

Force and violence are often the subjects of the question of what speech the First Amendment does not protect. The U.S. Supreme Court has laid out that “the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing *imminent lawless action* and is *likely* to incite or produce such action.”⁸⁷ But there is a difference between “teaching . . . of the moral propriety or even moral necessity for a resort to force and violence” (the “abstract advocacy of illegality”⁸⁸) and “preparing a group for violent action and steeling it to such action.”⁸⁹ Regulations failing to recognize the distinction between the two and actions against the former are unconstitutional.⁹⁰ The restriction must be against likely incitement of imminent lawless action.

Similar to incitement, “fighting words,” epithets, and personal abuse are not safeguarded by the Constitution.⁹¹ “Fighting words” are “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace” and are “likely to provoke the average person to retaliation, and thereby cause a breach of the peace.”⁹² A more colloquial definition for fighting words is “a quite unambiguous invitation to brawl.”⁹³ However, “speech cannot be restricted simply because it is upsetting or arouses contempt.”⁹⁴

“True threats,” which occur when the speaker “means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular

⁸⁵ *Bond v. Floyd*, 385 U.S. 116, 134 (1966); *Scales v. United States*, 367 U.S. 203, 229 (1961); *Harisiades v. Shaughnessy*, 342 U.S. 580, 592 (1952); *Dennis v. United States*, 341 U.S. 494, 502 (1951).

⁸⁶ *Stromberg v. California*, 283 U.S. 359, 368–69 (1931).

⁸⁷ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (emphasis added).

⁸⁸ *United States v. Williams*, 553 U.S. 285, 299 (2008).

⁸⁹ *Brandenburg*, 395 U.S. at 447–48.

⁹⁰ *Brandenburg*, 395 U.S. at 448.

⁹¹ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 574 (1942).

⁹² *Chaplinsky*, 315 U.S. at 572.

⁹³ John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* 114 (1980).

⁹⁴ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011).

individual or group of individuals” are not protected.⁹⁵ Similarly, speech “used as an integral part of conduct in violation of a valid criminal statute,”⁹⁶ such as conspiracy or solicitation, is not protected.⁹⁷

With limited exceptions, the First Amendment protects all forms the speech. For those exceptions, the law focuses on preventing imminent lawless action as opposed to abstract or hypothetical harms.

b. *What is a Public Forum?*

Equally important as what a person speaks, where he or she speaks also plays a significant role in First Amendment analysis. As a starting point, “[t]he Government’s ownership of property does not automatically open that property up to the public.”⁹⁸ The Supreme Court has identified four general categories of public properties in the context for free speech—traditional public forum, designation public forum, limited public forum, and nonpublic forum.⁹⁹ “[T]he extent to which the Government can control access depends on the nature of the relevant forum.”¹⁰⁰ Regulation of speech in traditional and designated public for a must meet “strict scrutiny.”¹⁰¹ On the other hand, “regulation of speech activity where the Government has not dedicated its property to First Amendment activity is examined only for reasonableness.”¹⁰²

The first and most protected category is the “traditional public forum.” These fora include open streets, sidewalks, and parks—areas that “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing

⁹⁵ *Virginia v. Black*, 538 U.S. 343, 359 (2003). True threats are not to be confused with “political hyperbole.” See *Watts v. United States*, 394 U.S. 705, 707–08 (1969) (reversing conviction of individual who threatened to shoot President Lyndon Johnson within a statement about his opposition to being drafted into military service).

⁹⁶ *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949).

⁹⁷ *Williams*, 553 U.S. at 297-98.

⁹⁸ *United States v. Kokinda*, 497 U.S. 720, 725 (1990) (plurality).

⁹⁹ See, e.g., Brannon P. Denning, *The Glannon Guide to Constitutional Law: Powers and Liberties* 405–06 (3d ed. 2019).

¹⁰⁰ *Kokinda*, 497 U.S. at 726.

¹⁰¹ *Id.* Strict scrutiny requires the government show that its regulations at issue “promote a compelling interest” and use “the least restrictive means to further the articulated interest.” *Sable Commc’ns of Cal., Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989). “It is not enough to show that the Government’s ends are compelling; the means must be carefully tailored to achieve those ends.” *Sable*, 492 U.S. at 126.

¹⁰² *Kokinda*, 497 U.S. at 727; see also *Cornelius*, 473 U.S. at 806 (“Control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.”).

public questions.”¹⁰³ A signifying feature of public fora is that they have as “a principal purpose . . . the free exchange of ideas.”¹⁰⁴ In these locations, “the government may not prohibit all communicative activity: any content-based restrictions must meet strict scrutiny or meet the constitutional standards for content-neutral reasonable time, place, and manner restrictions”¹⁰⁵

A second category of public fora is the “designated public forum,” which generally is described as “public property which the state has opened for use by the public as a place for expressive activity.”¹⁰⁶ When the government has designated a for public speech, the government must abide by the same standards for restricting speech that applies to traditional public fora.¹⁰⁷

A third category, and arguably a subclass of the designated public forum, is the “limited public forum,” where a government “reserv[es a forum] for certain groups or for the discussion of certain topics.”¹⁰⁸ Prime examples of limited public fora include municipal theaters, school board meetings, university meeting spaces, or spaces to be used by certain groups or for discussion of certain topics.¹⁰⁹ Notably, governments are not required to keep limited public forums open as public forums indefinitely,¹¹⁰ and “the government does not create a public forum by . . . permitting limited disclosure, but only by intentionally opening a nontraditional forum for public discourse.”¹¹¹

Finally, the nonpublic forum is public property not traditionally or designated a public forum, the government may reserve the property for its intended purpose “as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”¹¹² Examples of nonpublic fora include school mail facilities,¹¹³ military

¹⁰³ *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983); *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939).

¹⁰⁴ *Cornelius*, 473 U.S. at 800.

¹⁰⁵ *Perry Educ. Ass’n*, 460 U.S. at 45. The definitions of strict scrutiny and content-neutral restrictions are discussed below.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 46.

¹⁰⁸ *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

¹⁰⁹ *Perry Educ. Ass’n*, 460 U.S. at 46 n.7 (citing cases); *see also Rosenberger*, 515 U.S. at 829.

¹¹⁰ *Perry Educ. Ass’n*, 460 U.S. at 46.

¹¹¹ *Cornelius*, 473 U.S. at 802.

¹¹² *Id.*

¹¹³ *Perry Educ. Ass’n*, 460 U.S. at 46.

bases,¹¹⁴ city transit systems' rented advertising space,¹¹⁵ jails and prisons,¹¹⁶ public fairgrounds,¹¹⁷ and airport terminals.¹¹⁸

Importantly, the physical characteristics of a forum taken alone do not determine its public status. For example, the Supreme Court upheld a United States Postal Service regulation prohibiting solicitations on postal premises because, although the solicitors at issue were doing so on the post office's sidewalk (rather than the municipal sidewalk), it was on the post office's only sidewalk that led patrons between the parking lot and its front door.¹¹⁹ However, the Court also ruled protests on sidewalks outside the Supreme Court building were protected because the sidewalks in front of the court were indistinguishable from other sidewalks in Washington, D.C.¹²⁰ In particular, there was "no separation, no fence, and no indication whatever to persons stepping from the street to the curb and sidewalks that serve as the perimeter of the Court grounds that they have entered some special type of enclave."¹²¹

c. *The Government's Ability to Regulate Speech Depends on the Forum, Whether the Restriction is Content-Based, and the Methods of Restriction*

Having now addressed the "what" and "where" aspects of free speech legal analysis, we turn to the "how." Over the years, the Supreme Court has developed several standards or tests for examining government regulation of speech. "Governmental regulation that has an incidental effect on First Amendment freedoms may be justified in certain narrowly defined instances."¹²² Courts' constitutional inquiries examine both whether there is protected speech or activity at issue and whether the challenged regulation meets the legal standard for the protected speech at issue.¹²³ Additionally, the nature of the forum affects the

¹¹⁴ *Greer v. Spock*, 424 U.S. 828, 838 (1976).

¹¹⁵ *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974); *Pub. Utils. Comm'n of D.C. v. Pollak*, 343 U.S. 451, 464–65 (1952).

¹¹⁶ *Adderley v. Florida*, 385 U.S. 39, 47 (1966).

¹¹⁷ *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 642 (1981).

¹¹⁸ *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 680 (1992).

¹¹⁹ *Kokinda*, 497 U.S. at 727–28 ("The postal sidewalk was constructed solely to assist postal patrons to negotiate the space between the parking lot and the front door of the post office, not to facilitate the daily commerce and life of the neighborhood or city.")

¹²⁰ *United States v. Grace*, 461 U.S. 171, 179–80 (1983).

¹²¹ *Id.* at 180.

¹²² *Claiborne Hardware*, 458 U.S. at 912.

¹²³ *Id.*

constitutionality of a regulation of speech at that forum, along with any “special attributes” the forum may possess.¹²⁴

i. CONTENT-BASED RESTRICTIONS ON PROTECTED SPEECH MUST SERVE A COMPELLING GOVERNMENT INTEREST AND BE NARROWLY TAILORED TO THAT END.

In general, content-based restrictions on speech—laws that “appl[y] to particular speech because of the topic discussed or the idea or message expressed”—are presumptively unconstitutional and subject to strict scrutiny.¹²⁵ Laws that appear to be content-neutral on their face may be considered content-based regulations if they cannot be “justified without reference to the content of the regulated speech” or were adopted “because of disagreement with the message it conveys.”¹²⁶ Equally subject to strict scrutiny are regulations that apply based on the identity of the speaker, as they are “often simply a means to control content.”¹²⁷

Strict scrutiny means that the restriction must be “necessary to serve a compelling state interest” and that “narrowly drawn to achieve that end.”¹²⁸ For example, using strict scrutiny, the U.S. Supreme Court has struck down laws that gave town officials excessively broad discretion as to which organizations could solicit homeowners;¹²⁹ ordinances prohibiting circulating or distributing handbills on any city sidewalk, street, or other public place;¹³⁰ an ordinance prohibiting all picketing within a certain distance of a school with specific subject-matter exceptions;¹³¹ and regulations subjecting political signs and temporary signs concerning the directions to events to greater restrictions than other signs.¹³²

¹²⁴ *Heffron*, 452 U.S. at 650–51 (“consideration of a forum’s special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved”)

¹²⁵ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

¹²⁶ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)

¹²⁷ *Reed*, 576 U.S. at 170.

¹²⁸ *Perry Educ. Ass’n*, 460 U.S. at 45.

¹²⁹ *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 635 (1980).

¹³⁰ *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939).

¹³¹ *Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92, 101 (1972).

¹³² *Reed*, 576 U.S. at 171–72.

ii. NARROWLY TAILORED CONTENT-NEUTRAL RESTRICTIONS ON THE TIME, PLACE, AND MANNER OF PROTECTED SPEECH ARE CONSTITUTIONAL.

Courts review content-neutral regulations, or regulations that are not dependent on the type of speech, under a different test. Certain time, place, and manner restrictions on public assembly and speech are constitutional.¹³³ To be constitutional, a time, place, or manner restriction must meet three criteria: (1) be content-neutral; (2) be “narrowly tailored to serve a significant governmental interest”; and (3) “leave open ample alternative channels for communication of the information.”¹³⁴ A regulation of expressive activity so long as it is “*justified* without reference to the content of the regulated speech.”¹³⁵ For example, the Court has upheld restrictions on the use of sound amplification devices¹³⁶; noise ordinances around schools;¹³⁷ speech in a “buffer zone” around an abortion clinic;¹³⁸ and a content-neutral ban on picketing targeted at individuals’ residences.¹³⁹ However, the Court has invalidated a broad restriction of speech on the sidewalks surrounding the Supreme Court Building (as discussed above).¹⁴⁰ The Supreme Court also has repeatedly struck down content-neutral permit systems for the use of public spaces that gave officials too much discretion in denying permits public assemblies.¹⁴¹

d. *Content-Neutral Permit Systems for the Use of Public Fora are Constitutional Under Certain Conditions*¹⁴²

First Amendment case law does not forbid local governments from issuing or requiring permits for certain speech-based events, but that authority is not limitless. “The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of

¹³³ *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *see also Cox v. Louisiana*, 379 U.S. at 558.

¹³⁴ *Clark*, 468 U.S. at 293; *Ward*, 491 U.S. at 791. Importantly, “narrowly tailored” does not mean “least restrictive.” *Id.* at 798.

¹³⁵ *Ward*, 491 U.S. at 792 (quoting *Clark*, 468 U.S. at 293).

¹³⁶ *Kovacs v. Cooper*, 336 U.S. 77, 87 (1949).

¹³⁷ *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972).

¹³⁸ *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 772 (1994).

¹³⁹ *Frisby v. Schultz*, 487 U.S. 474, (1988)

¹⁴⁰ *Grace*, 461 U.S. at 180.

¹⁴¹ *Shuttlesworth*, 394 U.S. at 156 (1969); *Hague*, 307 U.S. at 516.

¹⁴² This appendix makes no assessment regarding the constitutionality of Huntsville’s permit system, HUNTSVILLE CODE ch. 23, art. VI.

safeguarding the good order upon which they ultimately depend.”¹⁴³ “If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets.”¹⁴⁴

A municipality’s permit system for the use of public forums is constitutional as a content-neutral regulation so long as the system meets certain requirements.¹⁴⁵ Primarily, the permitting system cannot give “overly broad licensing discretion to a government official”; must be content neutral; must require the authority to issue a permit within a specified and reasonable time period; “must contain narrow, objective, and definite standards to guide the licensing authority”; must provide for prompt judicial review of a denial; and must “leave open ample alternative channels for communication.”¹⁴⁶ To that end, the Supreme Court has “consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places.”¹⁴⁷

For example, the U.S. Supreme Court has:

- struck down a former Birmingham permit system that gave a municipal commission “virtually unbridled and absolute power to prohibit” demonstrations “guided only by their own ideas of ‘public welfare, peace, safety, health, decency, good order, morals or convenience’”¹⁴⁸;
- upheld a New York procedure designed to prevent the sale of obscene books that did not impose a restraint until a judicial determination of obscenity and provided expediated judicial procedures¹⁴⁹;
- struck down a permit system for the placement of newspaper racks as unconstitutional based on the mayor having “unfettered discretion to deny a permit application and unbounded authority

¹⁴³ *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941).

¹⁴⁴ *Id.* at 577.

¹⁴⁵ *Id.* at 574–576.

¹⁴⁶ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 226 (1990); *Ward*, 491 U.S. at 791.

¹⁴⁷ *Kunz v. New York*, 340 U.S. 290, 294 (1951).

¹⁴⁸ *Shuttlesworth*, 394 U.S. at 150.

¹⁴⁹ *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 443, 77 S. Ct. 1325, 1329 (1957).

to condition the permit on any additional terms he deems “necessary and reasonable”¹⁵⁰;

- struck down a public demonstration permit system that assessed a fee based on the content of the message to be conveyed and left the fee to be charged to the “whim of the administrator”¹⁵¹; and
- upheld an open air public meeting permit regime because it left licensing officials “no discretion as to granting permits, no power to discriminate, and no control over speech.”¹⁵²

Ultimately, the “inquiry in every case must be . . . whether control of the use of the streets for a parade or procession was, in fact, ‘exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places.’”¹⁵³

While permit systems may be constitutional, not all permit-less assemblies or demonstrations are unlawful.¹⁵⁴ Even where a government may have a permit system in place, some speech may rely on spontaneity or the ability to express a viewpoint quickly; and these means of speech still have First Amendment protections.¹⁵⁵ Courts have held permitting systems must provide “some alternative for expression concerning fast-breaking events.”¹⁵⁶ Indeed, a “city could not without violating freedom of speech and assembly flatly ban groups of people from spontaneously gathering on sidewalks or in public parks in response to dramatic news event.”¹⁵⁷ Additionally, the application of a permit system to speech by small

¹⁵⁰ *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 772 (1988).

¹⁵¹ *Nationalist Movement*, 505 U.S. at 133.

¹⁵² *Poulos v. New Hampshire*, 345 U.S. 395, 404 (1953).

¹⁵³ *Shuttlesworth*, 394 U.S. at 155.

¹⁵⁴ Though, a failure to obey a valid permitting system can be unlawful. *See Cox v. New Hampshire*, 312 U.S. at 574.

¹⁵⁵ *Shuttlesworth*, 394 U.S. at 163.

¹⁵⁶ *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1047 (9th Cir. 2006); *McDonnell v. City of Denver*, 878 F.3d 1247, 1253 (10th Cir. 2018) (discussing cases regarding spontaneous speech in public fora).

¹⁵⁷ *Vodak v. City of Chicago*, 639 F.3d 738, 749 (7th Cir. 2011).

groups is likely to be overbroad and constitutionally suspect because small groups are typically considered less disruptive.¹⁵⁸

That said, the government may still place some reasonable time, place, and manner restrictions. If an assembly or demonstration is undertaken without a permit, the government may request participants to stay out of streets, avoid obstructing traffic, keep a sidewalk clear, or relocate, and so long as the request is not substantially broader than needed to meet the government's interest and allows alternative channels for expression, the government's request will be appropriate.¹⁵⁹

e. *An Assembly Becomes "Unlawful" When a Clear Danger or Immediate Threat to Public Safety, Peace, or Order Arises.*

Concerns arise—both for the government and participants—when protests, rallies, assemblies, or other demonstrations lead to unrest, which raises questions of when the government may intervene. Constitutionally, a government has the right to stop assemblies that present a “clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order.”¹⁶⁰ For example, the Supreme Court upheld police arresting a speaker that defied police requests to end his speech when threats of violence were voiced by the crowd (and the speaker) and the crowd was on the verge of riot.¹⁶¹ However, absent evidence of unlawful activity, Supreme Court precedent rarely condones situations of police intervention.¹⁶²

Mere fear of potential disorder typically is not sufficient to justify government or police action against an assembly: “[t]he danger must not be remote or even probable; it must immediately imperil.”¹⁶³ Additionally, the danger must rise “far

¹⁵⁸ *Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005). Notably, different sets of permit rules for small groups may be constitutionally permissible. *Cf. Grossman v. City of Portland*, 33 F.3d 1200, 1207 (9th Cir. 1994).

¹⁵⁹ *Madsen*, 512 U.S. at 768; *Ward*, 491 U.S. at 800; *Marcavage v. City of New York*, 689 F.3d 98, 105 (2d Cir. 2012). The definition of an alternative channel is assessed, in part, by a speaker's ability to reach his or her target or its proximity to the desired channel or location. *Ward*, 491 U.S. at 802; *Marcavage*, 689 F.3d 98 at 107; *Gresham v. Peterson*, 225 F.3d 899, 906 (7th Cir. 2000); *see also* *Amnesty Int'l, USA v. Battle*, 559 F.3d 1170, 1188 (11th Cir. 2009) (determining no alternative channel may exist when government forecloses only venue allowed under a permit).

¹⁶⁰ *Cantwell*, 310 U.S. at 308; *see also* *Battle*, 559 F.3d at 1183–84 (“We recognize that police may properly limit the exercise of free speech where necessary for the safety and protection of protestors and the community.”)

¹⁶¹ *Feiner v. New York*, 340 U.S. 315, 317–21 (1951).

¹⁶² *See* *Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 245 (6th Cir. 2015) (discussing cases).

¹⁶³ *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 845 (1978).

above public inconvenience, annoyance, or unrest.”¹⁶⁴ Loud singing, cheering, and applauding in an outdoor assembly does not necessarily turn a peaceful assembly riotous or constitute a breach of the peace.¹⁶⁵ Likewise, the reactions or potential reactions of onlookers, agitation, jeering, or a tense atmosphere, may not justify a determination that danger has arisen, particularly where there are enough police personnel on scene to handle a crowd or a lack of any threatened violence.¹⁶⁶ Indeed, “constitutional rights may not be denied simply because of hostility to their assertion or exercise”¹⁶⁷; “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.”¹⁶⁸ In summary, police interference with a demonstration should be limited to situations of imminent violence, property damage, or public disorder—not mere boisterousness or just general unrest.

f. *How May a Protected Assembly be Dispersed by a Government?*

i. GENERAL CONSTITUTIONAL GUIDELINES

Generally, a government should not seek to terminate an assembly due to the unlawful actions of some members or because of prior similar activity led to violence. The government should seek to arrest or apprehend those members of an assembly engaging in unlawful conduct.¹⁶⁹ The acceptable way to deal with unlawful conduct connected with First Amendment activity is to punish it after the fact, rather than preventing the speech.¹⁷⁰

The “State’s interest in protecting the ‘safety and convenience’ of persons using a public forum is a valid governmental objective.”¹⁷¹ Should the necessary circumstances arise (including an “immediate threat to public safety, peace, or order” or demonstrators turning violent),¹⁷² a government may order an assembly to disperse instead of attempting to only arrest or apprehend unlawful

¹⁶⁴ *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). The U.S. Supreme Court has previously articulated that speech should not be considered as unlawful incitement to riot under state law unless (1) the speech explicitly or implicitly encouraged the use of violence or lawless action; (2) the speaker intends that his speech will result in the use of violence or lawless action; and (3) the imminent use of violence or lawless action is the likely result of his speech. *Bible Believers*, 805 F.3d at 246; *Brandenburg*, 395 U.S. at 448.

¹⁶⁵ *Cox v. Louisiana*, 379 U.S. at 547.

¹⁶⁶ *Id.* at 550–551.

¹⁶⁷ *Id.* at 551 (quoting *Watson v. City of Memphis*, 373 U.S. 526, 535 (1963)).

¹⁶⁸ *Nationalist Movement*, 505 U.S. at 134.

¹⁶⁹ *Claiborne Hardware*, 458 U.S. at 908; *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996).

¹⁷⁰ *Carroll v. President & Comm’rs of Princess Anne*, 393 U.S. 175, 181, (1968).

¹⁷¹ *Heffron*, 452 U.S. at 650.

¹⁷² *Cantwell*, 310 U.S. at 308; *Grayned*, 408 U.S. at 116.

demonstrators.¹⁷³ The order to disperse must not be used as a way to “to thwart or intrude upon First Amendment rights otherwise being validly asserted.”¹⁷⁴ To disperse an assembly within the bounds of the Constitution, authorities usually must inform the assembly of the order to disperse and provide an opportunity to comply.¹⁷⁵ In that same vein, a government should not advise an assembly they may demonstrate in a location and then revoke that permission without notice.¹⁷⁶

If a demonstrator does not obey an order to disperse after fair notice and a reasonable opportunity to comply, the demonstrator may be arrested or apprehended so long as they were part of the group violating the law (or imminently about to) and had the intent to violate the law—even if the particular individual was not engaged in unlawful activity.¹⁷⁷ At the same time, depending on the circumstances, the unlawful behavior of a few individuals within an assembly may not justify indiscriminate government or police action.¹⁷⁸ The Supreme Court has “repeatedly warned States and governmental units that they cannot regulate conduct connected with these freedoms through use of sweeping, dragnet statutes that may, because of vagueness, jeopardize these freedoms.”¹⁷⁹

In this context, police should be wary of making arrests and pursuing convictions that are “devoid of evidentiary support” or attempt to criminalize conduct not encompassed within the charging statute because such arrests violate constitutional due process.¹⁸⁰ For example, the Supreme Court overturned criminal convictions for “disorderly conduct” under a Chicago ordinance (which did not criminalize refusal to obey a police officer), when a protesters failed to disperse when ordered by Chicago police.¹⁸¹ The Supreme Court determined there was no evidence of disorderly conduct; the record showed that they were “charged and convicted for holding a demonstration, not for refusal to obey a police officer.”¹⁸² In that case, the “so-called “diversion tending to a breach of the peace” here was

¹⁷³ *Bernini v. City of St. Paul*, 665 F.3d 997, 1003 (8th Cir. 2012); *Carr v. Dist. of Columbia*, 587 F.3d 401, 408 (D.C. Cir. 2009); *see also* *Thayer v. Chiczewski*, 705 F.3d 237, 253 (7th Cir. 2012); *Wash. Mobilization Comm. v. Cullinane*, 566 F.2d 107, 120 (D.C. Cir. 1977).

¹⁷⁴ *Toole v. City of Atlanta*, 798 F. App’x 381, 387 (11th Cir. 2019)

¹⁷⁵ *City of Chicago v. Morales*, 527 U.S. 41, 58 (1999) (“[T]he purpose of the fair notice requirement [in disorderly conduct statutes] is to enable the ordinary citizen to conform his or her conduct to the law.”); *Cullinane*, 566 F.2d at 120.

¹⁷⁶ *Vodak*, 639 F.3d at 747; *Battle*, 559 F.3d at 1188.

¹⁷⁷ *See Claiborne Hardware*, 458 U.S. at 908.

¹⁷⁸ *Jones v. Parmley*, 465 F.3d 46, 59 (2d Cir. 2006).

¹⁷⁹ *Gregory v. City of Chicago*, 394 U.S. 111, 117–18 (1969) (Black, J., concurring).

¹⁸⁰ *Gregory*, 394 U.S. at 112.

¹⁸¹ *Id.*

¹⁸² *Id.* at 112 & n*.

limited entirely and exclusively to the fact that when the policeman in charge detail concluded that hecklers observing the march were dangerously close to rioting and that the demonstrators and others were likely to be engulfed in that riot.”¹⁸³ There was no law prohibiting picketing in the area occupied by the protesters or failure to follow an officer’s order to disperse, and certain justices determined that the disorderly conduct consisted of no more than disobeying a police officer’s command to leave the area.¹⁸⁴ Justice Black concluded, “To let a policeman’s command become equivalent to a criminal statute comes dangerously near making our government one of men rather than of laws.”¹⁸⁵ In summary, the enforced law must specifically prohibit certain conduct that police may enforce within the Constitution’s bounds, and government must arrest and prosecute on the basis of the proscribed conduct.

ii. ANY USE OF FORCE MUST BE “OBJECTIVELY REASONABLE” UNDER THE PARTICULAR FACTS.

If necessary, force may be used to disperse an assembly, but that force must comply with constitutional use-of-force principals.¹⁸⁶ The appropriateness of the force depends on the circumstances at issue.¹⁸⁷ In particular, if the demonstrator were seized or arrested, a fact-finder would evaluate whether the force used was “objectively reasonable” under the totality of the circumstances, per the Fourth Amendment.¹⁸⁸ Outside the context of arrests, Courts analyze excessive force claims under the Fourteenth Amendment’s Due Process Clause.¹⁸⁹ The Supreme Court has recently recalibrated this test, resulting in applying the same analysis as under the Fourth Amendment.¹⁹⁰ To make this assessment, the Supreme Court provided a list of several non-exhaustive factors:

1. the relationship between the need for the use of force and the amount of force used;

¹⁸³*Id.* at 120 (Black, J., concurring).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Edrei v. Maguire*, 892 F.3d 525, 541 (2d Cir. 2018) (citing cases), *cert. denied*, 139 S. Ct. 2614 (2019).

¹⁸⁷ *See Patel v. Lanier Cnty.*, 969 F.3d 1173, 1182 (2020) (quoting *Kingsley*, 576 U.S. at 397).

¹⁸⁸ *See Darrah v. City of Oak Park*, 255 F.3d 301, 305–06 (6th Cir. 2001); *see Graham v. Connor*, 490 U.S. 386, 395 (1989) (explicitly holding that the Fourth Amendment governs excessive force claims in the context of an arrest).

¹⁸⁹ *E.g.*, *Willis v. Mock*, 600 F. App’x 679, 685 (11th Cir. 2015) (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 843–45 (1998)); *see also Edrei*, 892 F.3d at 533.

¹⁹⁰ *See Patel*, 969 F.3d at 1181–82 (citing *Kingsley*, 576 U.S. at 397; *Piazza v. Jefferson Cnty.*, 923 F.3d 947, 952–53 (11th Cir. 2019)).

2. the extent of the subject’s injury;
3. any effort made by the officer to temper or to limit the amount of force;
4. the severity of the security problem at issue;
5. the threat reasonably perceived by the officer; and
6. whether the subject was actively resisting.¹⁹¹

Under either amendment’s analysis, the objective reasonableness standard not only extends to the use of apprehension, but to the use of tools such as tear gas or other enforcement actions.¹⁹²

- g. *What is a Riot, as Distinguished from Unlawful Assembly, Under Alabama Law?*

Alabama state law or local ordinances generally define crimes regarding unlawful gatherings in public places or breaches of the peace. These laws, under the constitutional analysis above, provide the basis by which to assess law enforcement’s conduct during the June 1 and 3 events. At an initial glance, several of the statutes appear duplicative, there are some key distinctions.

For example, the Code of Alabama defines “unlawful assembly” as congregating “with five or more other persons for the purpose of engaging in conduct constituting the crime of *riot* or if, being present at an assembly that either has or develops such a purpose, he remains there with intent to advance that purpose.”¹⁹³ Additionally, when a person “commands, solicits, incites or urges another person to engage in tumultuous and violent conduct of a kind likely to cause or create a grave risk of public terror or alarm,” he or she commits the crime of “inciting a riot.”¹⁹⁴ The unifying theme of these offenses is rioting, and a person commits the crime of “riot” when he or she, “with five or more other persons, . . .

¹⁹¹ *Id.* at 1182 (quoting *Kingsley*, 576 U.S. at 396).

¹⁹² *See* *Barney v. City of Eugene*, 20 F. App’x 683, 685 (9th Cir. 2001); *Fogarty v. Gallegos*, 523 F.3d 1147, 1159 (10th Cir. 2008); *see also Edrei*, 892 F.3d at 541 (citing cases applying use of force principles to crowd control contexts). Independent Counsel has been unable to locate any recorded Alabama or Eleventh Circuit precedents evaluating the use of force to dispel an assembly.

¹⁹³ ALA. CODE § 13A-11-5(a) (emphasis added). Huntsville has adopted this language as its definition of unlawful assembly. HUNTSVILLE CODE § 17-121.

¹⁹⁴ ALA. CODE § 13A-11-4(a).

wrongfully engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of public terror or alarm.”¹⁹⁵.

“Disorderly conduct,” another relevant offense, is defined multiple ways but hinges on “intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof” and prohibits, among other acts: “[e]ngag[ing] in fighting or in violent tumultuous or threatening behavior”; “[m]ak[ing] unreasonable noise”; “[i]n a public place us[ing] abusive or obscene language or mak[ing] an obscene gesture”; “[o]bstruct[ing] vehicular or pedestrian traffic, or a transportation facility”; and “[c]ongregat[ing] with other person in a public place and refuses to comply with a lawful order of law enforcement to disperse.”¹⁹⁶ Building on the disorderly conduct track:

The crime of “failure of a disorderly person to disperse” is committed when someone participates with five or more other persons in a course of *disorderly conduct* likely to cause substantial harm or serious inconvenience, annoyance or alarm, and intentionally refuses or fails to disperse when ordered to do so by a peace officer or other public servant lawfully engaged in executing or enforcing the law.¹⁹⁷

While some commentary says that police attempting to disperse a peaceful assembly would not be a “lawful order,” the statute was recently amended to make clear the law does not prevent law enforcement from taking action necessary to prevent breaches of the peace or to preserve public safety.¹⁹⁸ Admittedly, enforcement of these provisions are subject to constitutional scrutiny discussed above and are essentially limited to enforcement against unprotected speech (such as incitement or fighting words).¹⁹⁹

Similarly, Huntsville ordinances have outlawed “disturbing the peace”: “It shall be unlawful for any person willfully to disturb the peace of others by violence, offensive, boisterous or tumultuous conduct or carriage or by language calculated to provoke a breach of the peace, or to create or aid in a rout or riot within the city.”²⁰⁰ Further, the Huntsville ordinance empowers the police chief to disperse crowds from public places:

¹⁹⁵ *Id.* at § 13A-11-3(a). The Alabama Court of Appeals has stated that the actual creation of public terror or alarm is not required under the statute, and one person’s terror may be enough to sustain a violation. *Campbell v. City of Birmingham*, 405 So. 2d 65, 70 (Ala. Crim. App. 1981).

¹⁹⁶ ALA. CODE. §§ 13A-11-7(a)(1) to (a)(6).

¹⁹⁷ *Id.* at § 13A-11-6 (emphasis added).

¹⁹⁸ *Id.* at § 13A-11-7(d) & cmts.

¹⁹⁹ *See id.* at § 13A-11-7 cmts.

²⁰⁰ HUNTSVILLE CODE § 17-102.

Whenever the chief of police has good reason to believe that an unlawful assembly on a street or in a public place within the city is in progress or is planned to be held, the chief of police, if he has good reason to believe that it is necessary to prevent a breach of the peace, a disorder or a riot, may prohibit, for the time being, persons from occupying or passing on any street or public place where such breach of the peace, disorder or riot is threatened or is believed by the chief of police likely to occur, and to otherwise regulate passage or occupancy upon such street and place.²⁰¹

Alabama law also prohibits a person (not a law enforcement officer) from possessing a firearm within 1,000 feet of a public demonstration.²⁰² However, before arresting a violator, law enforcement must have first advised the person of the demonstration and ordered the person to leave the area of the demonstration until the person no longer has the firearm.²⁰³

No recorded opinion has found that Alabama’s breach of the peace statutes are unconstitutional and in violation of the First Amendment (or unconstitutionally vague or overbroad), though not many have been formally challenged.²⁰⁴ Nevertheless, it bears noting that the statutes would be void if they are used to reach or are applied to peaceful conduct.²⁰⁵

2. HPD Directives and Their Applicability to the Floyd Protests

Another key aspect of this review has been to consider the events of June 1 and 3 and determine whether the conduct of officers comported with the Huntsville Police Department Policy Directives (“Policy Directive” or “Directive”) applicable to the events of those days. As with all other topics of inquiry, Independent Counsel’s review of this issue on behalf of the CAC has been impaired by the inability to interview individual officers involved in discrete instances of conduct that directly implicate HPD policy. Given this limitation, this Report relies upon other sources to

²⁰¹ *Id.* at § 17-122(a).

²⁰² ALA. CODE. § 13A-11-59(c).

²⁰³ *Id.*

²⁰⁴ *See Devine v. Wood*, 286 F. Supp. 102, 105-06 (M.D. Ala. 1968) (rejecting challenge to prior version of unlawful assembly statute). The disorderly conduct statute’s prohibition on “unreasonable noise” with requisite intent has survived constitutional challenges. *See Windham v. City of Fairhope*, 20 F. Supp. 3d 1323, 1337 (S.D. Ala. 2014), *aff’d sub nom. Windham v. City of Fairhope*, 597 F. App’x 1068 (11th Cir. 2015); *Hutchins v. City of Alexander City*, 822 So. 2d 459, 462 (Ala. Crim. App. 2000).

²⁰⁵ *See Wood*, 286 F. Supp. at 104; *see also* ALA. CODE § 13A-11-7 cmts. (“An order by an officer that a peaceable assembly disperse would not be a ‘lawful order.’”).

piece together the relevant facts and circumstances. These resources have included BWC footage, information provided by members of the public present at the protests, various reports from HPD, and the CAC’s interview of Chief McMurray, as facilitated by Independent Counsel.

For purposes of this Report, Independent Counsel has identified the five Directives most relevant to the Floyd events that have generated the greatest public interest and concern. The five Directives are: 101.13—Use of Force; 101.13.1—Less-Lethal Extended Range Impact Devices; 101.24—Oleoresin Capsicum (OC); 407.1—Chemical Agents; and 406.4—Incident Response Team. These Directives are addressed below with a brief description of each and then an analysis of the Directives in light of the facts and circumstances gleaned through the sources of information available.

As additional background, we are not aware of any complaints against any individual officers being filed with the City or HPD.

a. *Use of Force*

HPD’s Use of Force (“UOF”) Directive outlines the general principles for the use of force by officers while on duty and sets a three-tiered continuum of force dependent on the situation faced by the officer. The three tiers are: Non-deadly Force (“NDF”), Less Lethal Force (“LLF”), and Deadly Force (“DF”). The Directive defines the types of force, in increasing ranges of severity, as follows:

- **Non-Deadly Force:** Any physical effort used to control or restrain another, or to overcome the resistance of another, neither likely nor intended to cause death or serious physical injury.
- **Less Lethal Force:** Any use of force that by its very nature is not intended to, nor is it likely to cause death; however, death may result depending on its use.
- **Deadly Force:** Force which is likely to cause death or serious physical injury, or which creates a substantial risk of causing death or serious physical injury.

An important point to note here is that less lethal force is frequently referred to by officers, civilians, and in various documents as “less than lethal force,” implying that the means of force employed does not pose a risk of death. A plain reading of the Directive shows that not to be the case, as it explicitly acknowledges that LLF can result in death. The only means of force that does not contemplate a risk of death is NDF. Nevertheless, by any fair estimation of the facts here, HPD officers during the Floyd protests used both NDF and LLF, but did not employ DF.

Similarly, we are not aware of any reports that a serious bodily injury of the type contemplated by the Directive's definition of DF occurred.

Regardless of the means of force used, the Directive dictates that the question of whether the force was appropriate, or not, is determined by applying an "OBJECTIVELY REASONABLE" test:

In determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the facts and circumstances he/she perceives at the time of the incident, which would likely cause a reasonable officer to act or think in a similar way under similar circumstances. The calculus of reasonableness must embody an allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. The appropriateness of an officer's decision to use force will be based upon the totality of the circumstances as perceived by the officer in the moment the force was used. Totality of circumstances includes, but is not limited to: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others and whether he is actively resisting arrest or attempting to evade arrest by flight.

The UOF Directive makes clear that the decision to use force, and at what level of severity, "is not left to the unfettered discretion of the involved officer." The Directive lists a total of sixteen (16) factors that can be used to assess the use of force, but notes that the itemized list is not exclusive. The factors officers may consider include: severity of the crime, safety threat to officers or others, resistance to arrest, availability of other officers, relative physical characteristics of the officer and suspect, number of suspects, location, and duration of the event.

Thus, the dispositive question of assessing an officer's use of force can be summarized as follows: How would a reasonable officer react in similar circumstances given the perceived threat to officer safety, the safety of others, the stability of the situation, the severity of ongoing criminal activity, and the willingness of the person against whom force is used to comply with lawful police process.

The UOF Directive requires officers to use de-escalation techniques before the use of force, but only where such techniques are "possible and appropriate." Examples of such techniques include "command presence, . . . verbal persuasion, and tactical repositioning." Where de-escalation efforts are undertaken, the Directive instructs officers to allow the subject of such measures "time and opportunity" to submit before force is applied. However, while de-escalation techniques are contemplated, they are not required, as the Directive takes into account that officers may encounter situations where such techniques will be

“ineffective or clearly inappropriate.” The Policy Directive emphasizes that “officers are often forced to make split-second decisions about the amount of force that is necessary in a particular situation” and “no policy can realistically predict every possible situation an officer might encounter in the field.” As a result, the Directive allows officers to exercise “well-reasoned discretion in determining the use of force in each incident” and to dispense with de-escalation techniques altogether.

Other relevant considerations of the Use of Force policy are training, first aid, and reporting. The Directive dictates that all officers are to be trained on the UOF Policy Directive annually and undergo periodic training that focuses on UOF techniques, “the importance of de-escalation,” and enhancing officers’ “discretion and judgment in using less-lethal and deadly force in accordance with this policy.” The Directive further requires officers to render “timely medical assistance” to anyone injured as the result of DF or LLF measures, and it requires officers to document ANY use of force in a case report, arrest report, or similar record.

a. *Non-Deadly Force*

i. DIRECTIVES

The Policy Directive states that NDF should be used where deadly force is not authorized and provides for the use of NDF in some of the situations the officers encountered on June 1 and 3 — to “bring an unlawful situation safely and effectively under control” and “overcome resistance or enforce compliance as quickly as possible in anticipation of and/or to prevent the escalation of resistance.” The Directive encourages officers to use “trained techniques” but, as the situation dictates, allows officers to use “any means or device at hand.” However, the Directive applies the ever-present caveat that all means of force must be “objectively reasonable” given the circumstances faced by the officer.

The Directive does not delineate the means of force or tactics that are authorized as NDF, nor does it define or identify the “trained techniques” mentioned in the policy. Presumably, such techniques are withheld from publication to further officer safety and prevent potential subjects from developing countermeasures or tactics to defeat the trained techniques. Given this framework, NDF techniques would be any technique used by an officer that is not specifically identified as LLF or DF, and otherwise does not fit within the definitions of the higher means of force. Two prominent, and instructive, examples of NDF that occurred on June 1 and 3 are the following:

1. A BWC audio recording captured a female officer stating that she had pursued on foot a female protester while the latter walked away from the police and filmed them on her phone. The officer said she yanked this person by the neck and threw her to the floor.

2. A BWC video recording showed an officer chase a suspect who was trying to get into the suspect's vehicle and then pin the suspect to the ground.

- ii. ANALYSIS

The difficulties faced by the CAC and Independent Counsel in determining whether these uses of NDF complied with HPD Directives, given our inability to interview the officers at issue, are significant. For each instance of NDF described above, the use of force can be construed in a myriad of ways, depending on the full context of the events leading up to the use of force. Without interviews of the officers, we do not have this context, but only snippets from audio and/or video captured by their BWCs. Nevertheless, we attempt a balanced consideration of each of these instances of force.

Example 1. There is no question that the female officer's contention that she "yanked" a protester "by the neck" and "threw her to the floor" constitutes a use of force as defined by the HPD Directive. While the description by the officer is dramatic and violent, it does not rise to the level of the type of force that is intended to cause serious death or injury, so we do not construe it to be DF. Similarly, because the technique described by the officer did not involve the use of a baton, taser, pepper spray, or similar item, we do not believe it constitutes LLF either. What the officer describes is physical contact with a subject intended to subdue the subject's activity and, therefore, is most like the definition of NDF in the Directive. The more difficult and troubling question is whether the force described by the officer complied with the Directive.

As set out above, HPD's Directive allows officers considerable discretion in determining whether the use of force in a given encounter with an individual is appropriate. The touchstone is the objectively reasonable test, and the marker for that test is the expected conduct of a reasonable officer faced with the same or similar circumstances. Here, given the officer's limited description of the subject's conduct prior to the officer "yanking" the person "by the neck" and "throwing her to the floor," it is difficult to justify the force used by the officer. The officer's captured statements describe the female subject as doing nothing more than filming a group of officers on her phone as she walked away from them. Nothing about this description by the officer indicates an individual who posed a safety risk to any officer or citizen, nor does it indicate that the female subject was resisting a lawful command or instruction from the officer in a way that would justify the use of force. Furthermore, if the officer had a tactical reason for preventing the female subject from filming the officers, this scenario seems to present the type of situation where de-escalation techniques could have been utilized before physical force was used. The officer's captured statements give no indication that any effort at de-escalation was made.

What we do not know is what occurred between the officer's observation of the female subject filming and the officer's use of force. We can conceive of conduct by the female subject in this interim period that might justify the use of force: the officer observed conduct that provided an objectionably reasonable basis that she posed a safety risk (possession of a weapon or other contraband); or the officer observed illegal conduct by the subject that warranted her arrest (striking another officer or citizen); or the female subject failed to heed an instruction to leave after the assembly was declared unlawful. However, on this record even the most conceivable basis for the force used by the officer is mere conjecture, and on the limited record before us we cannot identify any fact to harmonize the officer's use of force in this instance with HPD's Policy Directive.

Example 2. As with the first incident, we have little difficulty concluding that the officer's conduct of "pinning the subject to the ground" constitutes a use of force as contemplated by the Directive. We also believe this type of force aligns most closely with the Directive's definition of NDF. However, in this instance there are even fewer facts to analyze and determine whether the force used complied with the Policy Directive.

Based on the facts available, all we know is that the subject was running and was attempting to get into a vehicle at the time the officer used force against him. While the facts related in this Report presume the individual was in the process of getting into his vehicle, we cannot know this fact conclusively. The BWC seems to present a scenario where the officer was chasing the subject. It is logical to conclude that this chase resulted from conduct by the individual that the officer believed to be illegal, a risk of danger to officers and the public, or both. It would be particularly helpful to know if the officer chased and pinned the subject to the ground in the course of arresting the individual for illegal conduct. If such force was undertaken in the context of a lawful arrest, it would likely be dispositive of the analysis. This is so, because the Directive authorizes the use of NDF when it is necessary to "bring an unlawful situation safely and effectively under control." However, without the ability to interview the officer we cannot know why, or how, this incident occurred, and we cannot draw any conclusions about whether or not this incident complied with HPD's Policy Directive on the use of NDF.

Finally, we are not aware of either of these incidents of force being reported by the individual officers or any member of HPD, which is a departure from the Directive's requirement that any use of force be documented in a formal report. The lack of a written report of these incidents is also inconsistent with Chief McMurray's statement, when questioned by Independent Counsel, that he directed

that any instance of the use of force to be documented, reported by Internal Affairs, and investigated.²⁰⁶

b. *Less-Lethal Force, Chemical Agents, IRT and the Use of OC*




i. LESS-LETHAL

The UOF Policy Directive identifies three Less Lethal Force weapons that are authorized for use by HPD officers. These include Oleoresin Capsicum (“OC,” more commonly known as “pepper spray”), the Police Baton, Less Lethal Extended Range Impact Devices (“LLERID”), and Electronic Control Devices (i.e., tasers). Three of these means of LLF were used during the events of June 1 and 3. Tasers were not used at all. The IRT did use the Police Baton and OC, and a number of HPD officers used LLERID. Separate and individual policies govern the use of OC, LLERID, and the employment of IRT. Chemical Agents are not considered LLF, but given their specialized use they are also subject to a separate Policy Directive. These policies will be considered here as they apply to the use of force during the Floyd protests.

The HPD Policy Directive related to LLERID focuses on the implementation of tactical devices that are akin to conventional police weapons but utilize munitions that have “less potential for causing death or serious physical injury.” The Directive defines the devices as “Kinetic Energy Impact Devices.” Such devices “are intended to incapacitate a subject with a minimal potential for causing death or serious physical injury.” The Directive identifies the types of less lethal munitions that may be utilized by HPD. HPD provided us with a copy of an email communication from the Commander of HPD’s Special Operations Division to Chief McMurray that reported HPD’s use of LLF munitions during the protests of June 3. The report included the type of ammunition, the quantity used, and a brief description of how they were employed. The relevant information is set out in the table below.

²⁰⁶ Chief McMurray testified that no citizen complaints have been made against HPD officers relating to the Floyd events. The City and HPD did not produce documentation relating to complaints, presumably because there have not been any.


HUNTSVILLE POLICE REVIEW

TYPE OF MUNITION ²⁰⁷	QUANTITY	DESCRIPTION OF USE ²⁰⁸
<p>40 mm CS Direct Impact Round²⁰⁹</p> 	<p>7</p>	<p>1 round fired and “struck subject in the leg trying to throw CS projectiles back at officers.”</p> <p>“1 was deployed on a subject throwing a water bottle at officers. “</p> <p>“1 miss and 1 struck in leg and three fired at the ground to deliver payload into the air.”</p>
<p>Handheld CS Canisters</p> 	<p>4</p>	<p>Rounds employed “to move/suppress large group.”</p>
<p>37mm Launchable CS Skat Rounds</p> 	<p>17</p>	<p>Rounds employed “to move/suppress large group.”</p>

²⁰⁷ The photographs of the munitions were not provided by HPD and were obtained through open-source research.

²⁰⁸ The description set out in quotation marks is taken directly from the referenced email.

²⁰⁹ During his interview, Chief McMurray repeatedly referred to the use of “foam batons” as a munition used during the protests. Foam batons are essentially identical to the 40mm Direct Impact Rounds, and we believe the emailed report’s reference to the Direct Impact Rounds covers the “foam batons” described by Chief McMurray.

<p>12 Gauge Shotgun Beanbag Rounds</p> 	<p>18</p>	<p>“All less than lethal bean bags were directed at subjects throwing objects at officers and/or vehicles, advancing [on] officers after warning, or acting in threatening manner. The amount of use varies greatly due to the placement of the Sergeants on the line, [their] assigned duties and what they were encountering.”</p>
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ii. CHEMICAL AGENTS

HPD deployed a number of Chemical Agents during the protests. Many of these are described above. The use of Chemical Agents Policy Directive overlaps with a number of other policies that we consider here, and particularly the use of OC and LLF munitions. We deal with the latter issues separately in this Report. Our discrete consideration of Chemical Agents alone on June 1 and 3 is limited to gray smoke (HEXACHLOROETHANE or “HC”) and CS gas (“tear gas”). For each of these agents, the HPD Directive contemplates their use to “enhance the . . . Department’s effectiveness in defusing a confrontation with a minimum of risk to health and/or damage to property.” The Directive states that neither agent poses a significant risk of injury or death. As Chief McMurray described it, HC is nothing more than gray smoke that is implemented to warn a crowd that other agents may be used. Tear gas is commonly used by military and law enforcement as a means of dispersing large crowds. The gas poses no risk to human life unless exposure occurs in a tightly controlled space where the amount of CS gas could affect the availability of oxygen. However, tear gas is an irritant that causes extreme discomfort when inhaled, affecting the eyes, nose, and lungs.

Despite the lack of direct risks posed by these agents, the HPD Directive governing the IRT requires that a crowd be warned prior to the use of chemical agents to disperse the crowd. Our investigation indicates that HPD repeatedly warned the crowd that chemical agents would be used prior to their deployment. While there appear to have been some instances where portions of the crowd could not hear these announcements, HPD used a number of means to comply with the warning requirement by using the LRAD.

iii. HPD’S INCIDENT RESPONSE TEAM AND ITS USE OF LESS-LETHAL FORCE

HPD’s IRT exists to handle exigencies like the protests of June 1 and 3. The Directive says that the Department will maintain IRT to, among other things, respond to “Civil Disorders.” IRT’s role in civil disorders is to “discourage resistance

in a confrontation between police and a large, unruly crowd, or unlawful assembly.” As set out in the facts above, HPD deployed IRT on both June 1 and 3 after each protest was declared an unlawful assembly. Thus, the premise of IRT’s deployment was consistent with the governing Policy Directive.

IRT is uniquely structured. It is a platoon of 35 officers divided into five seven-person squads. There are four tactical squads and one squad that serves as an arrest team. Each squad is commanded by a sergeant, and the IRT platoon is commanded by a Lieutenant or higher. IRT falls under the Special Operations Commander of HPD. The IRT team also includes a Grenadier, who is responsible for maintaining and deploying chemical agents when necessary.

The Directive provides broad parameters for IRT’s operations during a civil disturbance and identifies various options for dispersing unruly crowds or unlawful assemblies. Relevant to the events of June 1 and 3, these options include authority to:

- Utilize IRT personnel in “various formations which are designed to encourage the movement of large groups of people who have failed to disperse after having been ordered to do so;”
- “Display the obvious presence of chemical agents and the means to deploy them;” and
- “Deploy chemical agents.”

The Directive does not require that these tactics be used in a strict order or force continuum, nor does the Directive prevent them from being used simultaneously. However, the Directive states that the physical movement of a crowd by IRT should be “the last resort” and contemplates such tactics only after chemical agents have been ineffective in dispersing a crowd. As for chemical agents, IRT should deploy them only after a crowd has been warned that the agents’ use is imminent. Where chemical agents are ineffective in dispersing a crowd, and the decision is made to deploy IRT to physically move a crowd, the Directive sets out specific procedures and tactics for doing so.

The physical dispersal of a crowd is done through an “Offensive Movement,” which is implemented by IRT officers moving in formation while holding a baton at the port arms position and then pushing or thrusting the baton forward as they move.



HPD IRT officers in the port arms position.

From our review of BWC footage during the protests, we know that IRT conducted an Offensive Movement to move crowds of protesters from areas where the crowd's assembly had been declared unlawful on June 1 and 3. As would be expected, several members of the IRT physically contacted individual protesters during this process. This type of contact would constitute a use of Less Lethal Force, because the officers were pushing the crowd with batons governed by the LLF Policy Directive. Examples of the types of LLF used by IRT included the following:

- Some officers on the IRT pushed individual protesters to the ground as they moved the crowds from areas where the assembly was declared unlawful.
- At least one IRT officer dove on top of a protester after pushing the person to the ground. The same officer pushed the protester to the ground a second time after the protester pushed the officer.
- Multiple IRT members were observed struggling with protesters on the ground once IRT began its push.
- IRT members also used OC spray on protesters as they moved them.
- One IRT officer appeared to spray the entire crowd with OC upon initial engagement, even as protesters backed up from the advancing IRT officers.

The means of force identified above touch on a number of HPD Policy Directives, including the Department's policy for the deployment of OC spray. HPD's Directive requires all officers to carry OC spray with them at all times while they are on duty. For that reason, each officer is required to undergo a four-hour

block of training prior to carrying OC spray. This initial training mandates that officers be subjected to OC spray being used against them, and officers must be retrained on the use of OC spray at least once every two years. The HPD Directive describes the purpose of OC spray as follows:

The spray provides the Officer with defense against combative, actively resisting, or violent individuals, while reducing the risk of injury to both the suspect and Officer. OC is not a replacement for other authorized devices and techniques, but may provide an alternative to the use of hard empty hand techniques, impact weapons, and deadly force in appropriate situations and/or circumstances.

The Directive contemplates the use of OC spray in any situation where the officer believes it is necessary, and its use must otherwise be consistent with HPD's Use of Force Policy Directive. The OC directive includes parameters for its use that are instructive in our consideration of its employment during the Floyd protests. The Directive's description of OC's use affords officers fairly broad discretion, and the description of its employment is unpleasant: "The spray should be directed at the suspect's face with two or three one-second bursts." However, the Directive makes clear that OC spray should be used against a subject with "only the amount of OC needed to control the situation, [and] [o]nce the situation and/or suspect is under control, the use of OC must be discontinued." Elsewhere the Directive states that "[u]se of OC is only for control and compliance, not for the purpose of punishment, interrogation or causing unnecessary discomfort."

iv. ANALYSIS

Although the CAC and Independent Counsel were able to interview Chief McMurray regarding the events of June 1 and 3, and although he answered a number of questions related the various means of force described above, he is not familiar with the detailed facts and context of how they were employed. He was not involved directly in, nor did he witness at the tactical level, every deployment of IRT, or all of the instances in which LLF measures and OC spray were used. We are again left to analyze the most sensitive aspect of this investigation without the most useful information—the firsthand descriptions and explanations of why the various means of force were employed. In spite of this limitation, the facts as we know them do allow us to draw some conclusions about the discrete instances of force identified in this section and their compliance with the implicated HPD Directives. Our analysis of each of these means of force is below.

v. LLERID

1. Rubber Bullets

The evidence related to the use of force that is of perhaps the greatest concern to the public—the firing of rubber bullets—is not entirely clear. MCSO used them; HPD may or may not have used them.

Although there were numerous reports of rubber bullets being fired during the protests, most of the evidence indicates that only MCSO made prominent use of rubber bullets on June 1 and 3. In his interview, Chief McMurray testified that he understood rubber bullets were used by MCSO, and he denied that HPD used them. In fact, he stated that HPD does not even have them in their munitions inventory and has not had them for years. On the issue of rubber bullets, Chief McMurray’s testimony including the following exchange:

MR. SHARMAN: Given that HPD does not use them, did it surprise you that the sheriff's department used them?

CHIEF McMURRAY: I think the use of them is not so much the problem. It's the misuse of them that becomes the problem. They have a direct application. Okay? A bean bag is only good from about me to you. It floats after that.

You go to a rubberized device which has stabilizer fins on it. If I have—if I have to shoot somebody at the back of this room, I have to use a stabilize fin device. It was our determination that if we have to disrupt you that far away, let's just use some gas or some other device. Okay?

So we’ve had a lot of experience and training, and we just decided to get away from it. One reason is because, yes, it is more accurate, but it is more devastating because it's harder, and so you can put out eyes with it. You can cause other -- so it was our opinion just to get away from the use of it.

Close encounter, if you need to be moved close and I can move you with a bean bag with less damage, that was our choice. It’s always been our choice, and we've stuck with that for many, many years now.²¹⁰

MCSO refused all efforts to participate in this investigation or provide records to the CAC or Independent Counsel, so we have not been able to explore any of the munitions employed by them. As for HPD, two additional notes merit

²¹⁰ Sharman, Jackson R., Elizabeth H. Huntley, and Mark McMurray. Interview of Mark McMurray. February 11, 2021 (“McMurray Tr.”) at 90–91.

attention. First, given the ballistics and characteristics of the other LLF rounds HPD used, a lay person unfamiliar with such munitions could conclude that they were, in fact, “rubber bullets” when they were not. Second, there is some evidence to indicate an HPD officer may have fired “rubber bullets”²¹¹ from a less lethal 12-gauge shotgun on June 3. Audio from BWC footage reflects an HPD officer saying he fired five “finned” rounds from his shotgun that were “T&E” rounds. The officer’s description of the rounds as “finned” is obviously important, because it seems to match Chief McMurray’s description of a “a rubberized device which has stabilizer fins on it” that he believes HPD no longer uses.

After our interview with Chief McMurray, we identified the statement made by the officer and have not been able to interview the officer involved. We brought this issue to the attention of HPD through the City Attorney. HPD responded by providing us with photographs of a 12-gauge munition that when fired deploys a rubberized finned round consistent with both Chief McMurray’s description and the statement made by the officer on the video. HPD could not confirm that such a round was fired on June 3, but confirmed that such a finned device is available to HPD’s SWAT team and the officer who made the comment about firing the “finned” round had been on the SWAT team.



Representation of Finned Round HPD Identified

If an HPD officer did use rubber 12-gauge rounds on June 3, this raises a number of questions: Why did Chief McMurray believe so strongly that they were not used on June 3 and had not been in HPD’s inventory for years? Why were the rounds not referenced in the After Action Report, the email report, or the Munitions Expended Report? The information provided by HPD does not answer these

²¹¹ We note here that the term “bullets” is a colloquialism used by the public to refer to all types of munitions fired from a gun. In this sense, a 12-gauge shell, or round, fired from a shotgun is no different than a conventional round fired from a handgun. Both are “bullets” from the public’s perspective. It also should be noted that police officers and the military generally refer to all munitions as “rounds” and do not use the term “bullets.”

questions. We do believe the officer’s reference to the rounds being “T&E” is relevant. The acronym typically refers to items provided to law enforcement agencies by manufacturers to allow the officers to “Test & Evaluate” the items before a formal acquisition. If such were the case, it could explain why the munitions, if used, were not accounted for in HPD’s inventory and why Chief McMurray was unaware of their use. It would not explain, however, why the use of rubber bullets was never reported.

2. Other LLERID

As for the munitions that we know were employed by HPD during the Floyd protests, compliance with HPD Policy Directives is a mixed bag. There were two prominent uses of these items during the protests. First was the deployment of CS gas, or tear gas, as a means to disperse large groups of protesters. It appears that in most instances CS gas munitions were fired in an indirect manner, i.e., fired into the air or directly onto the ground so that the CS gas could filter into the crowd and disperse it. Some CS munitions, however, were used in a defensive manner. Second was the use of the LLF shotgun to fire beanbags at protesters. The use of these munitions is explored in more detail below.

HPD’s Policy Directive states that CS munitions are deployed using one of three launching systems: Deftech Model 1315, Federal Labs Model 204, or Penn Arms Multi Launcher Model L8. Photograph examples of these systems are set out below. We also know that officers used a device to deploy 40 mm CS grenades, but HPD has not identified a specific brand of device. We include below an example of a 40mm launching device available on the market for law-enforcement use. It is similar to the 37mm device but, as the caliber description indicates, the 40mm version has a slighter larger barrel.



Deftech Model 1315



Federal Labs Model 204



40mm Launcher



Penn Arms Multi Launcher Model L8 – 37mm

We do not know which of these launching systems was used on June 1 and 3. We do know from one emailed report that some CS munitions were used to directly target individual protesters. The report reflected that multiple 40mm CS rounds were fired at a protester who tried to throw a CS muniton back at officers and at another protester who threw a water bottle at officers. In only one of these instances does the report indicate where a protester was shot with a CS round—in the back of the leg.

The emailed report’s description of the use of the LLF shotgun is similarly vague. The Policy Directive only contemplates the use of the Benelli Nova 12-gauge shotgun for this purpose, and it requires that all LLF shotguns be painted orange to indicate that they are only to be used with LLF munitions. During the events of June 3, HPD used deployed more beanbags (18) than any other single type of muniton. The report we reviewed states the beanbags were fired on protesters who were either throwing items at officers or “advancing in a threatening manner” but provides no additional detail.



vi. CONCLUSIONS

1. LLERID

Although the report lacks important details, it indicates the use of these LLF munitions in ways that comply with the Policy Directive. Each tactical use is in response to conduct by protesters that is described as threatening in some way—throwing items at officers or “advancing” on them. In addition, the report does not indicate that officers fired LLF munitions that struck the subjects on any part of their body other than the legs. This is an important fact, because the LLERID Policy Directive states the risk of serious injury from LLF munitions is “greatly

reduced when impacts to the head and neck are avoided.” In fact, the Directive addresses this issue as follows: “Head/Neck: Intentional impacts to these areas will be avoided unless the use of deadly force is justified, necessary and appropriate.”

However, the BWC footage we have reviewed captured an officer describing the use of LLF against a protester in violation of this policy. The officer describes firing three rounds at a single subject. He states the first round was fired “low” when the subject attempted to throw a garbage can at the officers. He fired two more rounds when the protester threw water bottles from his backpack at the officers. The officer stated that he then shot the subject in the “face.” The description of this incident by the officer is difficult to square with the Directive’s admonition that LLF rounds can only be fired to the head/neck area when deadly force is authorized. Nothing about the officer’s description indicates in any way that such force was necessary. Protesters throwing water bottles were common on June 1 and 3, and there is nothing about these bottles to indicate they posed a threat of imminent bodily harm to the officers or the public. It may be that the officer could provide additional factual details to support shooting this protester in the face, or perhaps his claim is not true, but given that we were not allowed to interview him during the course of this investigation we cannot know.

2. IRT’S PUSH

IRT’s movement of the crowds poses similar questions but with fewer compliance concerns. Once an “Offensive Movement” by IRT is ordered, a conclusion has been made that chemical agents and de-escalation techniques have not been successful in dispersing the crowd. As pointed out above, the threshold question for an Offensive Movement by IRT is whether an assembly has been classified properly as unlawful. We do not reach a definitive conclusion on this point, but on both June 1 and 3 IRT did not begin its Offensive Movements until the protesters had stayed at least an hour past their permitted protest time. Thus, the decision to use IRT apparently fell within HPD’s discretion to declare the assembly unlawful.

In this circumstance, once IRT has begun to push a crowd from an area it is expected that they will continue until that process is completed. In this environment, it is certainly foreseeable that protesters will face some means of force by IRT members if they do not heed the unit’s instructions to “move.” This dynamic explains most of the physical interactions between IRT and protesters that we describe in this Report. We cannot say, for example, that a protester being pushed to the ground as IRT pushes a crowd is “excessive” force. Even less clear is whether a prolonged struggle on the ground between some IRT members and the public, which is captured on video, is excessive. None of the Policy Directives we viewed contemplate such interactions, but they do not prohibit them, either. Given the contact that an “Offensive Movement” by IRT would be expected to bring, such situations are certainly foreseeable. As a result, we are less troubled by these instances of force than others that we address in this Report. However, we cannot

fully conclude that they are in compliance with the Policy Directives without further context that interviews of the involved officers would provide.

3. OC SPRAY

In our review of the use of OC spray we found compliance issues similar to our concerns with the use of LLF munitions. There were several instances where officers' use of OC spray appeared indiscriminate, excessive, and not limited solely to a "defense against combative, actively resisting, or violent individuals." Some observers have taken issue with officers aiming OC spray directly at protesters' faces, but this practice is not a problem under the Directive. OC spray is only effective when sprayed directly into the face of the subject, and the Directive instructs officers to use exactly this technique with two or three one-second bursts. What is a problem under the Directive is the use of OC spray against subjects who pose no threat or provide no resistance to officers, and/or the continued use of OC beyond the point when the subject has become compliant. There are multiple examples, captured on the BWC recordings, indicating that officers used OC spray in these ways and in violation of HPD policy.

BWC video showed an officer aim OC spray at the face of a protester and then spray that person after they began walking away. One protester was sprayed while walking away from an officer even though his back was turned to the officer. Another officer sprayed a subject with OC, threatened to use his taser against the subject, and then sprayed the subject's shirt left lying on the ground after the subject had taken it off. In yet another instance, an officer sprayed a protester who appeared to be doing nothing other than standing near the officers, and the officer later commented "that he hosed the crap" out of this particular subject.

In none of these instances does the camera depict any behavior by the subject that fits within the Directive's justification for OC use. In addition, several of these instances are directly counter to the Directive's strictures that "[o]nce the situation and/or suspect is under control, the use of OC must be discontinued" and "OC is . . . not for the purpose of punishment . . . or causing unnecessary discomfort." We do not foreclose the possibility that in each of these instances the officer at issue could have observed conduct that aligned the officer's use of OC spray with the Directive.

H. Confusion Surrounding Permit for NAACP Event on June 3

Less than a week before the 3 June 2020 NAACP rally in downtown Huntsville, Jerry Burnet met with HPD to apply for a permit for a rally on behalf of the Huntsville-Madison County branch of the NAACP. The application requested a permit for a peaceful rally and march to be held on June 3, 2020 at the northwest corner of the Madison County Courthouse in downtown Huntsville from 5:00 p.m. to 7:00 p.m. After applying for the permit, and before the City's final approval, the NAACP begin to advertise electronically for the June 3 rally and march.

On the morning of 2 June 2020, Benard Simelton, the state president for the NAACP spoke with HPD via telephone regarding the June 3 rally and proposed march. According to Mr. Simelton, HPD requested that the NAACP hold the rally in Big Spring Park as opposed to around the courthouse. Mr. Simelton agreed to this change on the condition that they would be allowed to march around the courthouse square at the conclusion of the rally. Thereafter, Sergeant Stephen Anderson prepared a permit for Chief McMurray's signature that stated the event would begin with a rally at Big Spring Park and conclude with a march around the courthouse square. The rally was to assemble at 4:30 p.m. and disband by 7:00 p.m. According to Mr. Simelton, he expressed his concerns to HPD about the rally location being moved to Big Spring Park because the NAACP had started advertising for the event to start at the courthouse per their permit application. Mr. Simelton said that HPD assured him that they would have officers in place to direct the protesters to Big Spring Park for the start of the rally.

At some after Mr. Simelton's June 2 phone call with, HPD drafted a revised permit limiting the NAACP event to a rally from 5:00 p.m. to 6:30 p.m. in Big Spring Park and removing the march from the courthouse square. Mr. Burnet executed the permit but cannot recall whether he informed anyone from the NAACP of the change to the permit. He thinks he may have told Mr. Simelton, but Mr. Burnet admits that he did not tell those with the NAACP that were handling the social media notifications.²¹²

Mr. Simelton said that he did not learn of the denial of the approval for march until he arrived at the rally on June 3 and was told by a reporter that the permit only allowed the rally. Mr. Simelton then reviewed the permit from Burnet to confirm what he was told by the reporter. Mr. Simelton was concerned because the protesters in attendance were under the belief that there would be both a rally and a march. The NAACP held the rally in Big Spring Park, announced to the attendees that their event was over, and left at the conclusion of the rally. Attendees who spoke at the listening sessions and in interviews stated that they were confused about June 3 and thought that there was supposed to be a march around the courthouse square until 8:00 p.m. Mr. Simelton later emailed Officer Danley to set up a meeting to discuss the non-approval of the march.

Although the march around the courthouse square was not included in the permit, protesters proceeded to march around the courthouse square at the conclusion of the NAACP rally in Big Spring Park. According to Chief McMurray, the courthouse square march was allowed for a period of time, approximately ninety

²¹² Dilsizian, Steven. "Huntsville-Madison County NAACP President Looking Forward to Wednesday Protest." WAAY News, June 2, 2020. <https://www.waaytv.com/content/news/Huntsville-Madison-County-NAACP-President-looking-forward-to-Wednesday-protest-570971201.html>.

minutes, and then ultimately disbanded by law enforcement due to timing and safety concerns.

I. Arrests and April 16, 2021, Trial

Independent Counsel did not receive much information from HPD regarding the arrests they made. Some of the videos do show some of the arrests that were made. Due to our inability to interview officers, we were unable to determine how MCSO, HPD, the Madison County District Court, or Huntsville Municipal Court handled the arrests. To gain more information on this topic, Independent Counsel attended the 16 April 2021, trial of three protesters that were arrested.

Based on conversations between the city prosecutor and the news media, HPD arrested twenty-three protesters. Of those twenty-three arrests, twelve resulted in a nolle prosequi—meaning the city prosecutor declined to prosecute those cases. Additionally, five individuals pleaded guilty. There were four guilty pleas on April 16. Two of the guilty pleas were to disorderly conduct with a \$100 fine and \$364 in costs. One plea was to two counts of disorderly conduct with each carrying a \$100 fine and \$364 in costs. One individual was charged with both disorderly conduct and obstructing governmental operations. The individual plead guilty to his charge of disorderly conduct with the same fine and costs and the prosecutor dismissed the obstruction charge in exchange for \$364 of court costs.

The three protesters stood trial on April 16 for disorderly conduct. The Huntsville Municipal Court found one protester not guilty and two other protesters guilty. The city prosecutor told media that a factor in deciding whether to proceed with prosecution was whether the arrested individual had a criminal history. If the individual did not have a criminal history, the City was less likely to prosecute. However, one of the individuals tried on April 16 did not have a criminal history, but the City continued with prosecution. The City decided to prosecute because certain officers viewed the defendant as the “ringleader.” HPD saw the defendant kneeling in the roadway at the intersection of Williams Avenue and Dr. Joseph E. Lowery Boulevard, and the defendant was yelling, “If one of you takes a knee, we (the protesters) will go home.” The prosecutor stated many officers believed if the defendant went home, most of the crowd would have left.

After the trial was over, the city prosecutor stated that there were three more cases pending—two cases for protesters stealing and shooting off fire extinguishers in a parking garage and one case which a protester threw a CS canister back towards HPD.

Consistently throughout the trial, the city prosecutor and officers who testified stated that on June 3 at the intersection of Williams and Lowery, HPD made announcements about every three to five minutes for protesters to disperse the area. None of HPD’s video that Independent Counsel reviewed, however,

supports this claim. None of the video reviewed shows HPD making orders to disperse at this intersection—especially not every three to five minutes. All three protesters who were tried stated they never heard any orders to disperse at Williams and Lowery. Additionally, the city prosecutor presented trial evidence of BWC footage from June 3 at this intersection, and none of the video played in court revealed any announcements to disperse at this location.

At the trial, HPD officers testified that ALEA troopers helped make the final push on protesters on June 3 at the Williams and Lowery intersection, advanced on protesters, and helped surround the protesters.²¹³ HPD officers also admitted that the streets in that area were not blocked off to cars. This testimony is supported by the BWC footage that shows HPD officers pushed protesters through Big Spring Park and toward Church Street while there were still cars driving in the street. According to the testimony, HPD tried to block off the streets from traffic after protesters were pushed to the streets. HPD apparently was never able to block off Lowery Boulevard.

Certain officers testified that they never prohibited anybody from leaving the protest and that protesters were free to go wherever they wanted. One HPD sergeant testified that HPD did not prohibit anybody from reaching their cars and he did not see any protesters ask to get around the officers to reach their cars. One protester on trial stated he approached a line of officers several times throughout the protest asking if he can get past them to reach his car and the officers did not respond. The BWC footage that Independent Counsel reviewed showed multiple incidents of officers refusing protesters to walk certain directions to reach their cars or leave.

Most notably from the April 16 trial, Independent Counsel learned HPD may not have produced all BWC footage from the protests. Most of the BWC footage that the city prosecutor showed in court was footage that Independent Counsel had not received or reviewed. The city prosecutor played BWC footage from certain officers and called to the stand certain officers who testified to being at the June 3 protests. Independent Counsel does not have video footage from these officers. The officers who testified stated they had their BWC recording during the protest.

CONCLUSIONS AND RECOMMENDATIONS

I. COMMAND AND CONTROL WAS LACKING AS AN INTER-AGENCY MATTER.

One of the notable aspects of the protests on June 1 and 3 was the degree of interagency operations among state and local law enforcement during the tactical phases of those events. Agencies with a meaningful presence on the ground during

²¹³ Assuming that the HPD officer's testimony is accurate, it is inconsistent with ALEA's statement to us that ALEA was only involved in traffic control.

the events included HPD, MCSO, MPD, and ALEA. Below, we provide a general overview of the interoperation of these agencies, then we focus our analysis on the concerns related to the use of force by these various agencies. We attempt to assess how the interagency operations affected those issues and have impacted the public's perception of the events of June 1 and 3. We also discuss how such issues might be addressed going forward.

Traditional considerations of command and control in the military and law enforcement contexts focus on whether the various operators in a given scenario have been able to operate under clear direction from their commanders, or, by contrast, whether the command structure created friction that impeded the goals of the operation. Here, our review found little to indicate that there were any significant command and control problems in this traditional sense. Our review of this issue is based almost exclusively on HPD's After Action Reports and our interview of Chief McMurray. Both sources provided multiple examples of coordination among the various agencies. Coordination was particularly evident on June 3 as it relates to the agencies' efforts to disperse protesters once they arrived at the Madison County Courthouse and exceeded the timeframe of the permit. MCSO, under the direction of Sheriff Kevin Turner, had primary responsibility for securing the courthouse building itself, HPD policed the streets and the crowd, and ALEA served in a support role. However, as the situation at the courthouse evolved, the coordination among these three agencies became more direct and dynamic.

For example, once Sheriff Turner declared the assembly unlawful, the IRT units from both MCSO and HPD conducted an Offensive Movement²¹⁴ to move protesters from the immediate vicinity of the courthouse. HPD's After Action Report states that these efforts were coordinated between MCSO and HPD and that their IRT units "linked up" with one another to move protesters. HPD's reporting also states that ALEA joined this effort by driving their vehicles among the protesters on the streets in an effort to disperse them.²¹⁵ Once the protesters were moved to Big Spring Park, ALEA officers joined other officers and IRT in removing the remaining protesters from the area.

In his interview, Chief McMurray discussed his role in the employment of IRT, the use of chemical agents, and the use of less lethal force during the protests. He stated that on June 1 he actually served as the tactical commander, which meant that he would have given direct orders regarding the use and employment of measures such as chemical agents and less lethal measures. On June 3, the tactical commander was the captain in charge of the Special Operations unit (i.e., IRT), but Chief McMurray stated he was informed and aware as officers employed various

²¹⁴ A detailed discussion of IRT's conduct of Offensive Movements on June 1 and 3 is found in our analysis of HPD's Policy Directives on pages 81–82 and 88–89.

²¹⁵ The After Action Report notes one minor command and control issue here, because ALEA arrived from the opposite direction than HPD's IRT commander had expected.

use-of-force measures. Chief McMurray also stated that ALEA state troopers were there at his request. ALEA provided a minimal number of troopers (ten to twelve), who were placed at various points around the protest to “watch the backs” of the officers.

Chief McMurray also gave an overview of the command structure on both June 1 and 3. As it relates to the responsibilities shared between the resident agencies (MCSO, MPD, and HPD) he referenced a meeting with Sheriff Kevin Turner and Madison Police Chief David Jernigan. He relayed that there was a joint agreement that Sheriff Turner and MCSO would be responsible for the courthouse while Chief McMurray and HPD would be responsible for what occurred on the streets. This arrangement makes sense, because the sheriff in each county in Alabama is generally responsible for the security of the county courthouse. Chief McMurray did not discuss what Chief Jernigan’s responsibility would be, but he did state that Sheriff Turner asked MPD SWAT to provide overwatch of the crowd from the rooftops of buildings surrounding the protest.

From this arrangement of shared responsibilities, two of the more controversial uses of force emerged—first, the use of rubber bullets and second, complaints by the public that they observed rifles being pointed at the crowd from the tops of buildings. Chief McMurray categorically denied that HPD was responsible for either of these tactics. As we note elsewhere in this Report, there is some evidence to indicate that at least one HPD officer used rubber bullets on June 3, but the prevailing view is that MCSO used them far more prominently. Chief McMurray stated that HPD had not had rubber bullets in its inventory for years even though HPD’s Less Lethal Force Policy Directive contemplates their use. He stated that it was his understanding that MCSO was the only agency that used rubber bullets during the protests. However, he declined to comment on the propriety of MCSO’s conduct, because he was not aware of the context or circumstances of their use of rubber bullets.

As for the rifles being pointed at the crowd of protesters, Chief McMurray stated that was done by the MPD SWAT officers. He surmised that the purpose of pointing the rifles at the crowd was to make use of the rifles’ scopes to observe the crowd. Chief McMurray was critical of this tactic because the image of police pointing rifles at a crowd from a rooftop is problematic regardless of the purpose. He stated that the better option for that type of observation would have been to use binoculars that are typically provided to SWAT teams. Chief McMurray stated that he would have specifically asked his SWAT team not to use rifle scopes to observe a crowd in a similar situation.

It is important to note that Chief McMurray indicated that it was his point of view that once the protests became focused on the courthouse, Sheriff Turner, in effect, became the commanding officer of the response and Chief McMurray was his subordinate. Chief McMurray seemed to base this conclusion on two things. First,

the sheriff is an elected official and the chief law enforcement officer of the county. Second, the sheriff is responsible for the security of the courthouse. Our inference from Chief McMurray's statements in this regard is that there was little he could do to influence Sheriff Turner's tactics.

Chief McMurray's point of view is understandable. An elected county sheriff has considerable powers. In fact, the office of the county sheriff is a state executive branch position created by the Constitution of Alabama.²¹⁶ However, it is not clear to us that the sheriff's discretion when operating within the jurisdiction of a municipal police department in the same county, as was the case here, is unfettered. It would stand to reason that discretion would be even further curtailed where the sheriff is utilizing the officers of an adjacent municipality to provide overwatch as he did with MPD. Chief McMurray seemed to take issue with both agencies' use of tactics that have drawn considerable public attention and controversy, and his circumspection about the use of such tactics is commendable. However, the CAC, in its advisory function for HPD, is concerned that other law enforcement agencies engaged in questionable tactics during the protests, within the city limits of Huntsville, without the approval of Chief McMurray, the Huntsville mayor, or the City Council. Of course, the CAC must confront the possibility that HPD used rubber bullets on its own. However, the CAC is even more concerned that it is left without recourse as to these issues because it has no jurisdiction over them whatsoever—an issue compounded by these agencies' lack of cooperation with this review.

This lack of accountability is the one command-and-control shortcoming we identify in this review. If protests of this nature occur again—as they almost certainly will—the City may face the potential reality that other law enforcement agencies will operate in the city using tactics that its police chief not only deems inappropriate, but refuses to even contemplate for HPD officers. There is no simple way to address this issue. Each of the involved agencies is governed by its own body of elected officials. However, we recommend that Madison County, the City, and the Madison City consider entering into a memorandum of understanding (MOU) that will define the parameters of the use of force in instances where their law enforcement officers engage in joint operations like the protests subject to this review. Such MOUs are common in both military and law enforcement operations where different sets of operators have a need to coordinate and deconflict different philosophical approaches to rules of engagement, escalation of force, and tactical procedures.

In addition to use of force, the MOU should address other strategic and logistical issues. One example is officer appearance. We received several comments about some officers at the Floyd protests in plain clothes or otherwise not in a recognizable uniform. A review of video showed some officers in plainclothes

²¹⁶ See ALA. CONST. art. V, § 12

wearing exterior tactical vests and carrying patrol rifles. While non-uniformed officers may be appropriate under certain circumstances, their appearance may create confusion or skepticism at protests, especially given concerns of potential violence by counter-protesters. When asked about this in his interview, Chief McMurray said that all HPD officers (with the exception of undercover officers within the crowd to assist with intelligence) were uniformed, and the officers described were potentially from other agencies or assigned to local task forces that arrived to assist at the events. An MOU between participating agencies may reduce confusion and quell any concerns about officers' appearances and authority.

II. USE AND MISUSE OF INTELLIGENCE

Of the many questions raised during this review, three particular questions regarding the June 2020 events emerge recurrently: (1) What did HPD know? (2) When did they know it? (3) What did they do with the knowledge? This section addresses HPD's intelligence gathering and analysis processes and how HPD used data, information, or intelligence as part of the preparations for and responses to the events. Beyond the largely factual analysis of what happened, this section also provides critical conclusions and makes recommendations for future events. As with other issues in this review, the inability to interview any HPD personnel other than Chief McMurray has hampered Independent Counsel's and the CAC's ability to address this topic. Accordingly, this section has some admitted limitations. However, the conclusions and recommendations within this section are based on Independent Counsel's review of literature discussing "best practices" for policing protests, and HPD should consider—or continue—regardless of any perceived deficiencies of the department.

In addressing the particular issue of intelligence analysis, Independent Counsel has the benefit of hindsight and public feedback. HPD did not have these benefits at the time it acted. "Intelligence is often an inconclusive web of leads, allegations, or partial accounts requiring further corroboration, verification, and investigation—which may not always be possible to do before the existing intelligence must inform operational decisions."²¹⁷ HPD made decisions based on its assessment of available information, and while that assessment is the subject of this review, any decision during the course of high-tension events like those in June 2020 carry risks. Will police overreact (as some have alleged here) or will they underreact (as some have alleged in the 6 January 2021 riots at the U.S.

²¹⁷ NYPD Report at 55–56. See full citation to report, and reports on reviews of other agencies, in Appendix I below.

Capitol)?²¹⁸ Additionally, while use of intelligence can be a valuable tool for crime prevention and peace keeping, it runs certain risks when misapplied.²¹⁹

Independent Counsel recognizes there is not a singular “playbook” to address public demonstrations or protests because often no two events are the same—they involve different issues, organizations, people, and myriad other variables. Law enforcement often must respond with nuanced and or tailored solutions. Here, this Report previously addressed what HPD did with regard to intelligence,²²⁰ and now we turn to our assessment of HPD’s actions.

A. Conclusions

Independent Counsel and the CAC have drawn several conclusions from their review of HPD’s intelligence activities for the Floyd protests. Some conclusions are complimentary of HPD’s actions; some are critical. As a reminder, these conclusions are only as good as the information reviewed. Accordingly, to the extent HPD may disagree, Independent Counsel and the CAC have based these conclusions on the information and evidence made available. With additional information, such as officer interviews, some conclusions may be different.

1. HPD made positive use of some information and intelligence.

Independent Counsel’s review showed several instances of HPD’s gathering, analyzing, or disseminating information or intelligence in a positive manner. This conclusion stems from HPD’s corroboration of actions by evidence, efforts to validate data collected, or disseminating information with appropriate context.

One example is NAMACC’s publication of bulletins about two brothers. On 29 May 2020, NAMACC produced a bulletin about the brothers following concerning activities and threats made by the brothers in the fall of 2019, and the bulletin warned that the brothers were known to be armed. The bulletin cautioned that the recent national events concerning law enforcement may cause the brothers to confront officers. The brothers were observed at the June 1 rally, and HPD arrested one brother for a weapons charge. Following that event, NAMACC included additional intelligence in a bulletin it published in advance of the June 3 rally. Both bulletins appear to be appropriate uses of intelligence resources based on their

²¹⁸ Wu, Nicholas, Kevin Johnson, Christal Hayes, and Matthew Brown. “‘Colossal’ Breakdown: FBI Warning Not Fully Shared before Capitol Riot; Police Lacked Training, Gear.” *USA Today*, February 23, 2021. <https://www.usatoday.com/story/news/politics/2021/02/23/capitol-riot-fbi-warning-not-fully-shared-police-lacked-training/4554229001/>.

²¹⁹ Maguire, Edward R. “New Directions in Protest Policing.” *Saint Louis University Public Law Review* 35, no. 1 (December 1, 2015): 67–109. <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1028&context=plr>.

²²⁰ *See, supra*, at pp. 38–39.

addressing persons with known history of confronting police and making threats, and the June 3 bulletin appears even more appropriate given the brothers' attendance at the June 1 event and one brother's arrest while possessing a firearm.

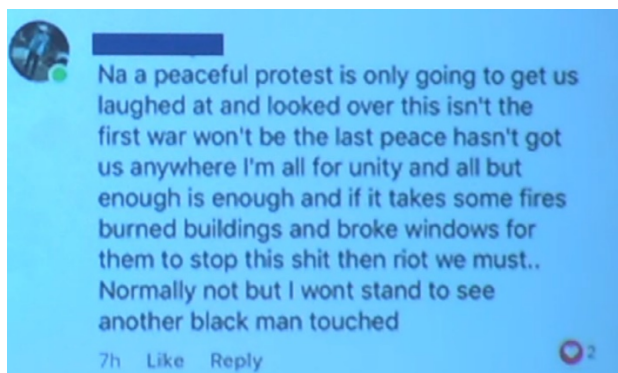
HPD also received a tip from the community regarding the potential for out-of-town protesters or "agitators" coming by bus to Huntsville to do violence. In response to this tip, NAMACC investigated by researching Greyhound bus manifests and searching criminal histories for passengers planning to disembark in Huntsville. NAMACC could not verify that any disruptors were coming to Huntsville via bus and advised HPD command staff accordingly.

Similarly, HPD grew concerned that protesters were purchasing large quantities of hardware materials (wood, bricks, blocks) or acid to use during protests. NAMACC received reports of similar activities in the Birmingham area. NAMACC and HPD contacted all Madison County hardware stores and determined there were no significant purchases or reductions in stock except one large purchase of muriatic acid. While protesters could use muriatic acid to spray in officers' eyes, this purchase was by a contractor using it to clean concrete.

Chief McMurray has also claimed that on June 1 an HPD officer observed a group of twenty-three cars driving on highway in Huntsville, and all of the cars had Georgia license plates. At Chief McMurray's direction, HPD visited every hotel in Madison County to determine if these out-of-towners were coming to Huntsville, and these cars were not found at those hotels.

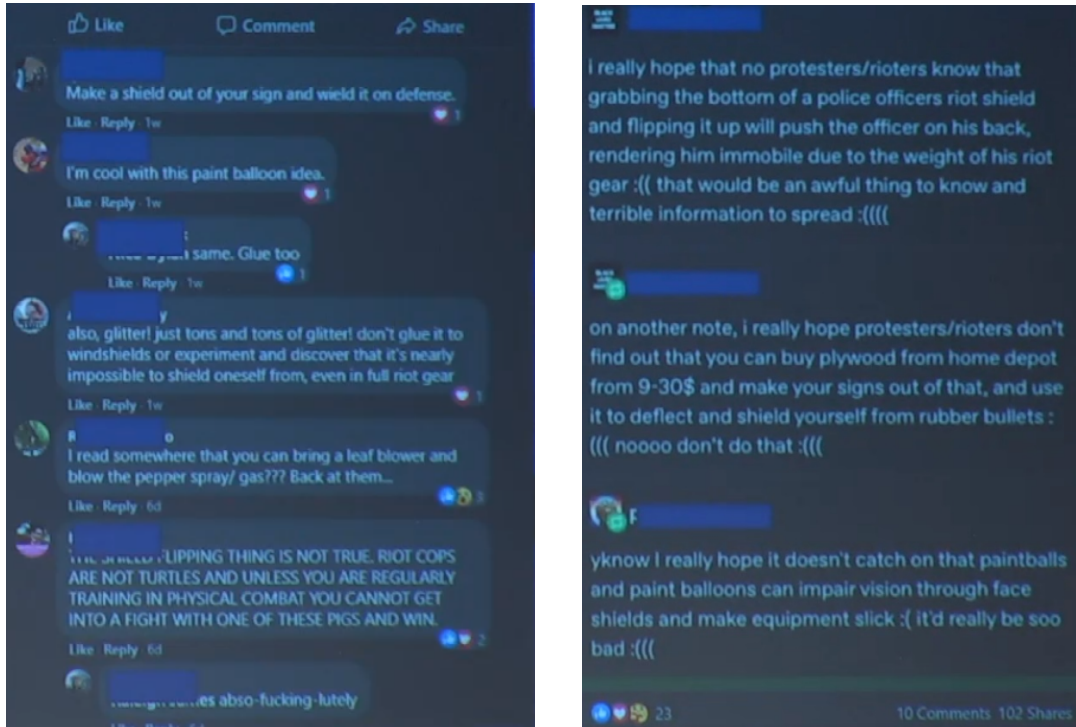
Looking at these three examples, HPD appears to have deployed appropriate resources to investigate information received relating to these three leads.

In addition to investigating tips and information, NAMACC identified several troubling social media posts. While not individually actionable, they appear to justify law enforcement's heightened alert and preparedness for hostilities:

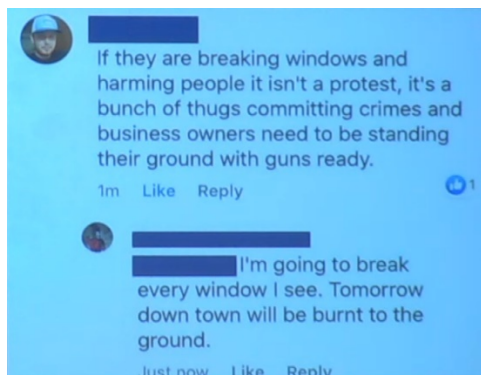


Post in advance of June 1

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Posts in advance of June 3



Post in advance of June 3

Admittedly, the identities of the people making these posts are unknown, and several of the posts have sarcastic tones. Yet, the overall implication is that, if taken seriously, these individuals planned to spray materials on officers to impede their ability to see and defend against threats. Although these postings carry threats or information that is unverified, they present cause to place officers on heightened alert as they prepare for and respond to the events, and the abstract fear of violence against law enforcement may be reason to view these types of posts with heightened sensitivity.

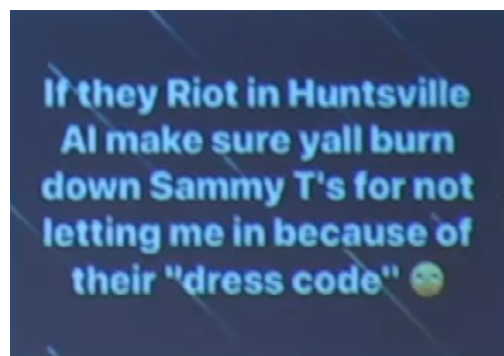
2. Possible Overreactions to Some Social Media Postings

While there were several concerning social media postings that gave rise to concern, there were others HPD, through Chief McMurray, cited that HPD appears

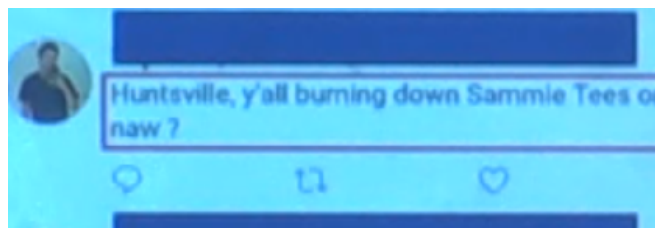
to have misinterpreted or to have failed to recognize sarcasm or ambiguity. Chief McMurray claims that all of the social media posts he has cited in his presentations after the June 1 and 3 events were reviewed before those events. Independent Counsel is skeptical. It is not out of the realm of possibility that some postings were dated prior to the events but not captured—or at least not given attention—until after the events, and some may have been used as hasty *post hoc* justifications or rationalizations.

Make no mistake, the CAC and Independent Counsel recognize the value of social media as a tool for preparing for unrest. Recently, the Director of the FBI discussed social media as a tool extremists or violent groups use to disseminate information.²²¹ Social media posts before the 6 January 2021 attack on the U.S. Capitol warned of war-like violence.²²² Reviewing social media postings for information or intelligence in advance of mass events is appropriate. However, poor analysis of social media may lead to overreaction (or underreaction) to the perceived threats.

One example of a threatening post HPD cited supposedly encouraged protesters to damage Sammy T's, an establishment near the courthouse square:



Posting referenced as in advance of June 1



Postings referenced as in advance of June 3

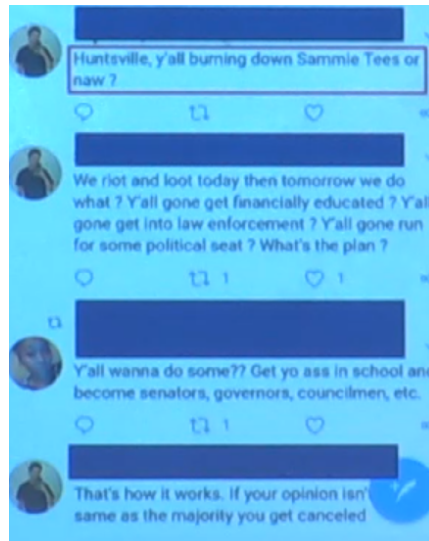
²²¹ Volz, Dustin, and Rachael Levy. “Social Media Plays Key Role for Domestic Extremism, FBI Director Says.” *Wall Street Journal*, April 14, 2021. <https://www.wsj.com/articles/social-media-is-key-amplifier-of-domestic-violent-extremism-wray-says-11618434413>.

²²² Broadwater, Luke. “Capitol Police Told to Hold Back on Riot Response on Jan. 6, Report Finds.” *The New York Times*, April 13, 2021. <https://www.nytimes.com/2021/04/13/us/politics/capitol-police-riot-report.html>.

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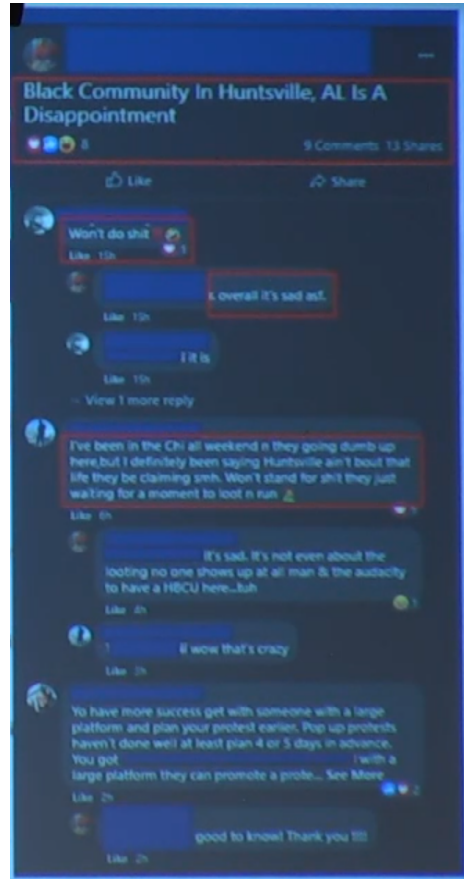
There were also email communications within NAMACC and HPD regarding the same or similar concerns for Sammy T's.

Taken alone, some of these comments may cause concern. However, when viewed in the context of other comments made around the same time, the sincerity of any “threats” appears questionable. One of the postings about regarding “burning down Sammie Tees” had several other comments, including from the original poster, that give the impression the poster was being facetious.



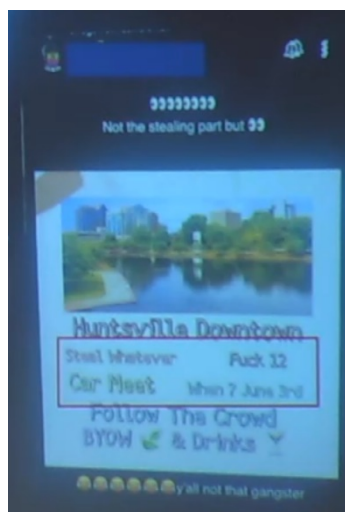
The comments following the incendiary initial comment shows a dialogue about the perceived futility of destructive protests. Another post was discussed by Chief McMurray:

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The posters seem to posit that rioting and looting will not achieve the change sought. However, Chief McMurray's presentation highlighted these postings as evidence of destructive intent.

One of the supposedly threatening posts was from Snapchat, and citizens forwarded the post to NAMACC:

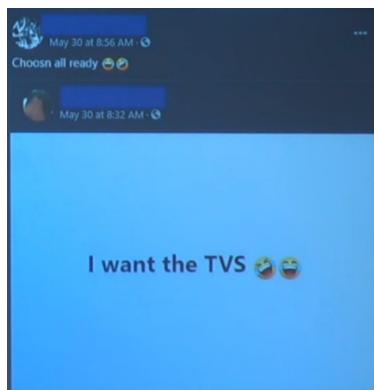


In Chief McMurray’s June 18 presentation, he noted the acronym “BYOW” as potentially meaning “bring your own weed” or “bring your own weapon.” NAMACC and HPD emails discussed this message as potentially having one of those meanings, too. When asked about why NAMACC or HPD reached the conclusion that BYOW would mean “bring your own weapon,” Chief McMurray stated:

These—what’s the chatter going on about the event? Is it bring your own weed? Bring your own women? Bring your own wheels? Those are decisions that we have to go through the process of determining what the “W” means. We ended up knowing what it means because when you go look at it around the country, those events, that means something.²²³

Two points rebut Chief McMurray’s interpretation. One, the context of the post itself leans towards a reference to “bring your own weed” because there is a leaf emoji posted next to the acronym, and the post suggests bringing your own drinks. Next, Independent Counsel’s use of internet search engines for the BYOW acronym shows more references to “bring your own weed.”²²⁴ In fact, the most popular reference to “Bring Your Own Weapon” relates to an obscure music group.²²⁵ As discussed below, how HPD reached this specific conclusion, as opposed to other seemingly plausible conclusions, is not clear.

Admittedly, while not certain, even some singular comments on social media could have been made facetiously, yet were cited as evidence of potential hostilities.



Post referenced as in advance of June 1 event

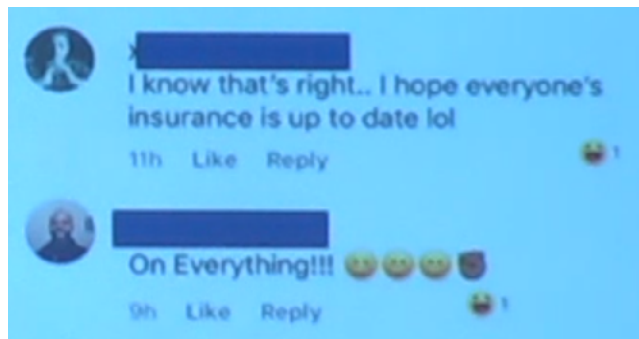
²²³ McMurray Tr. at pp. 26–28.

²²⁴ See, e.g., “Byow.” Urban Dictionary, October 10, 2015. <https://www.urbandictionary.com/define.php?term=byow>. To be sure, there is one reference to weapons on this online slang dictionary, but Chief McMurray is cited as the source. “Byow.” Urban Dictionary, July 9, 2020. <https://www.urbandictionary.com/define.php?term=byow&page=2>.

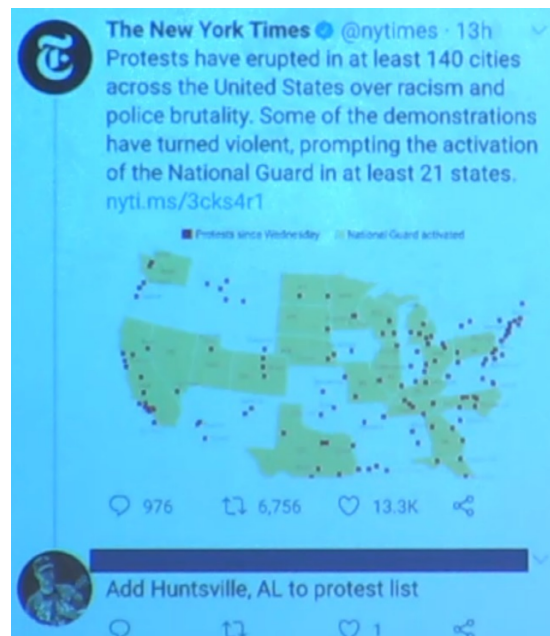
²²⁵ See, e.g., “What Does BYOW Stand for?” AcronymFinder. Accessed April 18, 2021. [https://www.acronymfinder.com/Bring-Your-Own-Weapon-\(band\)-\(BYOW\).html](https://www.acronymfinder.com/Bring-Your-Own-Weapon-(band)-(BYOW).html).

Again, addressed more below, there is a lack of clarity in why HPD believed this statement—a noncontextualized statement with laughing emojis—to be a threat as opposed to a crude joke.

Even aside from questionable comments that could be read as “jokes” or not, there were some arguably benign statements Chief McMurray interpreted as threatening.



Post referenced as in advance of June 1 event



Post referenced as in advance of June 3 event

In his presentation, Chief McMurray interpreted the above two posts to be evidence that the posters were planning damage to the city. However, one of the posts could be interpreted simply to make the statement that downtown businesses may have to make insurance claims due to potential damage—not that the poster is threatening to do the damage. To the extent the post could be evidence of the simple possibility of property damage, HPD has not explained how it or NAMACC verified the post for actionable intelligence. Additionally, the post in response to *The New York Times* could be read simply to say that as of June 2 or 3 *The New York Times*

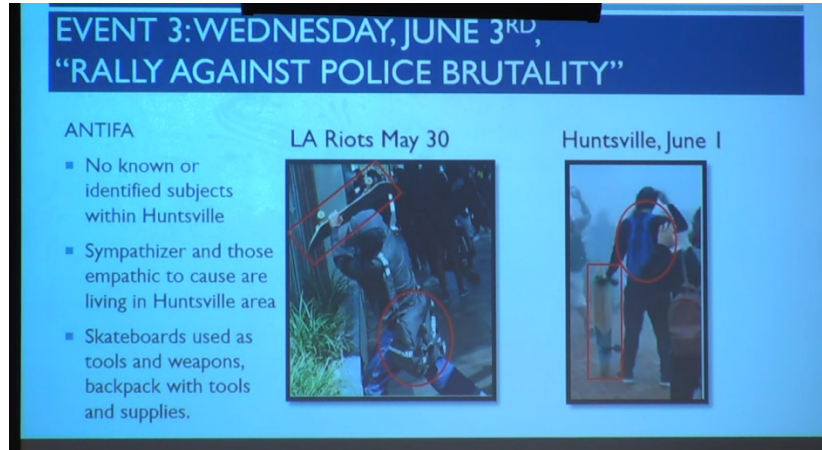
could add Huntsville to the list of cities that experienced violent demonstrations as opposed to evidence of upcoming violence. Chief McMurray’s interpretations further suggest HPD fell victim to biases and failed to employ more scrutinizing analysis.

Another supposed piece of evidence of unrest was Chief McMurray’s reference to “Mr. 27,” a person known as having a criminal history (including violence), “posting violent threats” in advance of the June 1 rally, and attending the June 1 event. Interestingly, of all the social media posts Chief McMurray shared, we did not see any posts from Mr. 27. Independent Counsel has reviewed posts on Mr. 27’s Facebook profile. Many posts related to protests and events in Huntsville, but none appeared overtly threatening (although not all posts were publicly viewable). Chief McMurray claimed that Mr. 27’s attendance at the June 1 rally “validated intelligence,” although Chief McMurray did not cite anything Mr. 27 did other than attend the rally. To be sure, Chief McMurray showed a photograph of Mr. 27 standing at a barricade in front of the courthouse, but there is no evidence Mr. 27 breached the barricade or otherwise engaged in violence. Chief McMurray also showed another picture of the two brothers referenced above walking away from where Mr. 27 was standing. However, there is no evidence that Mr. 27 engaged with the brothers. Accordingly, Mr. 27’s significance as a threat is questionable.

It is also worth noting that at least two citizens contacted HPD and disputed Chief McMurray’s characterization of their social media posts as evidence of Antifa support or sympathy. During his June 18th presentation, Chief McMurray highlighted several posts by individuals alleged to be in Huntsville that included posts or pictures consonant with Antifa support or sympathy. Two citizens contacted HPD to dispute that position. Although they admitted to having posted the images on social media, they denied supporting or sympathizing with Antifa or violent protests. One citizen specifically stated that she did not create the cited post until the afternoon of June 3, essentially while the event occurring, thus NAMACC could not have reviewed or relied on that post. Additionally, other than having posts on social media that were available for people to see, it is not clear what support these individual posts provided to law enforcement.

3. HPD appears to have overreacted to other observations.

In addition to social media posts, some of the “intelligence” HPD supposedly relied on provides questionable support for the positions HPD has taken. For example, Chief McMurray highlighted that protesters wearing masks, carrying water bottles, or acting as field medics—so-called black bloc or Antifa tactics—gave rise to concern that some protesters may have been prepared, if not spoiling, for a fight with law enforcement. He also mentioned that some protesters came prepared with wooden signs or with skateboards, which, based on observations from other protests around the country, was evidence protesters prepared for destruction and violence. According to Chief McMurray, HPD observed ten of thirteen potential classes of Antifa protest participants at the June 1 and 3 events.



Slide from June 18 Presentation

What is concerning about Chief McMurray’s claims is the lack of corroborating evidence that any of the types of individuals described actually participated in or provoked violence. For example, there is no evidence the person pictured above with a skateboard and backpack at the June 1 event in Huntsville engaged in violence similar to that portrayed in the image from Los Angeles. Additionally, there has been no specified evidence of wooden signs used as shields or weapons.

Finally, Chief McMurray’s reference to field medics as complicit with violent protesters has questionable merit based on comparable cases. In 2017, hundreds of protesters were arrested in Washington, D.C., following property damage during protests at President Trump’s inauguration.²²⁶ Several of those arrested were people who were attending the protests as medics, but they were charged as being part of a larger group effort to damage property.²²⁷ Ultimately, either judges dismissed some charges against medics, medics were acquitted at trial, or prosecutors dropped charges because of the lack of legal or evidentiary support following the other dismissals and acquittals.²²⁸ Thus, saying someone is a medic and branding them as a criminal or one supportive of violence is a bit dubious. Without more, the value in seeing some precautions by protesters as being a threat is not apparent. Indeed, as some evidence shows, several protesters needed medical assistance.

²²⁶ Kurzius, Rachel “Some of the people on trial for rioting on Inauguration Day were there to dispense first aid.” *Washingtonian*. December 13, 2017. <https://www.washingtonian.com/2017/12/13/street-medics-inauguration-day-protesters-first-aid/>.

²²⁷ *Id.*; Alexander, K.L. “Government says it is dropping most remaining Inaugural Day rioting cases.” *The Washington Post*. January 18, 2018. https://www.washingtonpost.com/local/public-safety/government-says-it-is-dropping-most-remaining-inaugural-day-rioting-cases/2018/01/18/c6ce259c-fc90-11e7-a46b-a3614530bd87_story.html.

²²⁸ *Id.*

This skepticism is consistent with findings of a review of the Indianapolis Police Department—the presence of medics does not necessarily reveal violent intent of protesters.²²⁹ At the least, law enforcement should be cognizant of the opposing view of the medics’ purpose—to provide medical care for a variety of ailments (*e.g.*, heat-related illness, dehydration, or physical injury) regardless of the intent of the “patient.”²³⁰ Field medics may view themselves as a supplement to any emergency medical services (like HEMSI) that are already in place. In fact, at least one citizen in Huntsville contacted HPD after the June 1 event and voiced this exact concern. Additionally, raising suspicion about having medics available appears contrary to the City’s event permitting process, which recommends participants anticipating large crowds to coordinate for medical personnel to be available.²³¹ Thus, HPD’s assessment of medics being evidence of a threat is questionable.

4. What evidence or intelligence HPD actually relied on is not clear.

Despite a two-and-a-half-hour presentation to the City Council and a four-hour interview with Independent Counsel, Chief McMurray’s explanation of what NAMACC or HPD actually relied on as actionable “intelligence” is unclear. NAMACC apparently spent a great deal of time gathering and reviewing social media, but HPD has not explained the extent to which specific posts, if any, were reliable. Additionally, the methodology for investigating tips and for identifying which tips to investigate is also an open question.

During his interview, Chief McMurray acknowledged a difference between “information” and “intelligence.” “Information” seemingly is raw data or tips that has not been analyzed for reliability or utility. “Intelligence” is information or evidence analyzed through some process and law enforcement has determined if it is “actionable.” In his interview, Chief McMurray took the position that, other than crowd size, the evidence NAMACC or HPD possessed was unvalidated information—not intelligence. Because of the lack of intelligence, Chief McMurray did not warn Huntsville of ensuing violence, but his department was prepared to address the unrest. Chief McMurray also said HPD could not take any action regarding the posts about Antifa because the posts were “just conversations.” This view of the “information” appears in contrast with Chief McMurray’s use of social media posts and other unvalidated sources of information as justification for the actions taken by HPD in response to the June 1 and 3 protests.

²²⁹ IMPD Report at 30–31, 36–37.

²³⁰ *See* IMPD Report at 5–6.

²³¹ *See also* IMPD Report at 30 (permit required event organizers to provide medical safety plan to officials). To be sure, Huntsville’s permit application provides contact information for HEMSI when it recommends preparations for medical personnel, but it does not expressly require that medical services be provided by HEMSI.

Also confusing is HPD's decision on what information to investigate. Chief McMurray stated one of his officers reported seeing twenty-three cars with Georgia license plates drive through Huntsville on June 1. HPD visited every hotel in Madison County to determine if these out-of-towners were coming to Huntsville, and HPD did not locate these cars at those hotels. Similarly, NAMACC received information that hardware stores were being bought out of bricks, stones, and caustic acids. Chief McMurray said he called every hardware store in Madison County and found nothing suspicious in their inventories. Chief McMurray also indicated that additional investigation was conducted to determine the veracity of a tip that out-of-town protesters were coming into Huntsville via bus, and NAMACC's investigation did not corroborate that tip.

While these additional investigations were laudable, there are still questions about why NAMACC or HPD investigated certain leads as opposed to others. NAMACC had information regarding Mr. 27 and the person that posted "BYOW" on Snapchat. Chief McMurray made clear HPD knew who these individuals were, knew of their criminal histories, and believed them to have violent intentions. This raises the questions as to why HPD did not contact these individuals in advance of the event or otherwise investigate these individuals or their posts or why HPD did not publish officer safety bulletins. These same questions would go for any of the other people posting perceived threats on social media.

The potential for cognitive biases is also a concern with how NAMACC or HPD gathered or used information or intelligence. Cognitive biases are faults within human thinking that can detract from making rational choices.²³² "A cognitive bias is a flaw in your reasoning that leads you to misinterpret information from the world around you and to come to an inaccurate conclusion."²³³ While this review does not seek to address all potential cognitive biases, a specific potential bias is the "confirmation bias."²³⁴ This bias refers to "the tendency to process information by looking for, or interpreting, information that is consistent with one's existing beliefs."²³⁵ Confirmation bias can lead to a person clinging to information

²³² See Yagoda, Ben. "The Cognitive Biases Tricking Your Brain." *The Atlantic*, September 2018. <https://www.theatlantic.com/magazine/archive/2018/09/cognitive-bias/565775/>. ("[T]he collection of faulty ways of thinking that is apparently hardwired into the human brain.")

²³³ Stanborough, Rebecca Joy. "Is Cognitive Bias Affecting Your Decisions?" Healthline, May 28, 2020. <https://www.healthline.com/health/mental-health/cognitive-bias>.

²³⁴ Although referencing cognitive biases, this Report does not attempt to offer any psychological or sociological opinions as to what extent, if at all, any cognitive biases may have affected HPD's actions.

²³⁵ Casad, B. J. "Confirmation bias." *Encyclopedia Britannica*, October 9, 2019. <https://www.britannica.com/science/confirmation-bias>.

that conforms to a preconceived view of a problem or supports a preferred decision while discounting information that is contrary to the individual's preferred view.²³⁶

Applied to HPD's assessment of and response to the June 1 and 3 events, an observer may conclude that, based on preconceived notions, HPD over-relied on information that would support a view that violence was likely, or that agitators would be or were present at the protests, while discounting contrary evidence. It could also support the view that HPD analyzed ambiguous evidence in a manner supporting the use of its tactics. Conversely, members of the public, who may already be critical of police activities generally, may view the same evidence police did but giving protesters more of the benefit of the doubt because it would fall in line with their preconceptions. This issue of bias only exacerbates the obvious tension between officers and protesters given the sensitive topic—policing tactics.

Other than Chief McMurray's presentations to the City Council, it is not clear how valuable any specific information or intelligence was to HPD's response generally. We have no further explanation from HPD or NAMACC officers. Because of these limitations, we are unable to discern to analysis process to make a more informed conclusion.

B. References to other cities

Other cities around the country employed similar techniques for gathering and analyzing intelligence. Reviews of these departments have provided useful critiques to guide further discussions on intelligence. The CAC and Independent Counsel recognize that Huntsville and HPD are not exactly comparable to the cities and departments addressed below, but the lessons learned are still helpful.

1. New York

The New York Police Department's Intelligence Bureau ("NYPDIB") operates similar to NAMACC by gathering and distributing intelligence to assist the department.²³⁷ NYPDIB appears to use tactics similar to NAMACC's by reviewing open-source information and relying on informants or undercover officers.²³⁸ During mass events, NYPDIB deploys officers assigned with its section to join other officers to assist with gathering information for NYPDIB and disseminating new information back to officers "on the ground."²³⁹ During the May and June 2020 events, social media was a significant source of information, providing evidence of

²³⁶ *Id.*

²³⁷ NYPD Report at 49.

²³⁸ *Id.* at 50.

²³⁹ *Id.*

postings hostile to police.²⁴⁰ NYPD found evidence of groups organizing resources and personnel to prepare for violence and vandalism.²⁴¹ NYPDIB published various reports and assessments, and some reports were distributed to command staff while others were distributed department wide.²⁴² Although, a review of NYPD's reliance on some of that information had mixed results.²⁴³

Even with the intelligence gathered, NYPDIB acknowledged it was caught off guard by the size and intensity of the events experienced in its city.²⁴⁴ Additionally, NYPD's ability to address the events was complicated by the events' leadership (or lack thereof). NYPD had familiarity with the organizers of some of the demonstrations and was able to facilitate some events.²⁴⁵ Other events were more spontaneous and lack organized leadership, making communications and facilitations more difficult.²⁴⁶ NYPD also had experience managing large events—such as the Occupy Wall Street movement and the Republican National Convention.²⁴⁷ Even considering all of these factors, a review of the event found there was actionable intelligence but that NYPD's use of mass arrests was disproportionate the threat.²⁴⁸ Independent Counsel recognizes that HPD did not employ mass arrest tactics—in fact HPD sought to avoid mass arrests as much as possible. All of this is to say that many departments have lessons to learn and there are not apples-to-apples comparisons.

2. Chicago

Chicago Police Department (“CPD”) maintains its Crime Prevention and Information Center (“CPIC”).²⁴⁹ Similar to NAMACC, CPIC is a “fusion center” that has connections with the Department of Homeland Security (“DHS”) to gather, assess, and disseminate intelligence, and it is staffed by multiple agencies (CPD, FBI, DHS, and Illinois State Police).²⁵⁰ CPIC monitors, reviews, and disseminates intelligence from open sources (social media, news media, community sources) to

²⁴⁰ *Id.* at 54.

²⁴¹ *Id.* at 51.

²⁴² *Id.* at 52.

²⁴³ *Id.* at 54.

²⁴⁴ *Id.* at 53.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *See id.* at 53.

²⁴⁸ *Id.* at 56.

²⁴⁹ CPD Report at 27.

²⁵⁰ *Id.*

guide department personnel regarding planned protests.²⁵¹ Specifically, CPIC received reports of a threat to set fire to one of CPD’s precincts, and it also disseminated information regarding events planning to shut down traffic on major highways, similar to events in Los Angeles.²⁵² Despite the availability of information, a review of CPD’s response to events during May and June 2020 revealed information gaps and confusion regarding CPIC’s assessment of the anticipated size and severity of the events.²⁵³

3. Philadelphia

Philadelphia Police Department (“PPD”) was not immune to incidents of unrest. PPD has its own Intelligence Bureau and is a member of the Delaware Valley Intelligence Center (“DVIC”).²⁵⁴ DVIC shared information from news and social media noting nationwide protests and threats of looting.²⁵⁵ While PPD initially denied receiving any intelligence regarding specific threats to Philadelphia, it acknowledged these types of events were occurring across the country.²⁵⁶ In the days leading up to the events in Philadelphia, DVIC noticed upticks in online interest in events planned in Philadelphia that were similar to nationwide events and shared this information with PPD.²⁵⁷ DVIC also observed similar events were happening in cities in close proximity to Philadelphia.²⁵⁸ PPD also received information directly from community members regarding potential looting, which led to some police response, and these tips also informed PPD that their initial assessment of the expected size of the events was flawed.²⁵⁹

4. January 6, 2021, at the U.S. Capitol

While not related to the events immediately following the death of George Floyd, the riots and unrest at the United States Capitol on 6 January 2021, provide a cautionary tale regarding the potential use of or reliance on intelligence regarding protests. In advance of the January 6 event, Capitol Police and collaborating agencies developed a plan for preparing for protesters in the area.²⁶⁰ However, on

²⁵¹ *Id.*

²⁵² *Id.* at 27, 30–31.

²⁵³ *Id.* at 31, 37.

²⁵⁴ PPD Report at 4, 24.

²⁵⁵ *Id.* at 4.

²⁵⁶ *Id.* at 20.

²⁵⁷ *Id.* at 24.

²⁵⁸ *Id.* at 24–25.

²⁵⁹ *Id.* at 12.

²⁶⁰ *See* Wu, *supra* note 218.

January 5 the FBI transmitted a bulletin to the Homeland Security Joint Terrorism Task Force (“JTTF”), of which Capitol Police is a member agency, that identified the threat of potential violence in an online message board by coordinated demonstrators from across the country.²⁶¹ Capitol Police administration and the sergeants at arms of both the House of Representatives and the Senate admitted to not having been aware of the bulletin prior to the riots, and they further admitted that the information would have altered their plans for the event.²⁶² Subsequent reports indicate that Capitol Police lacked standards for gathering and assessing intelligence, did not provide adequate training for its intelligence officers, and failed to follow what little standards the department had.²⁶³ Even in the absence of an intelligence breakdown, though, this event highlights that protests advertised or encouraged to be peaceful (at least by some) may deteriorate quickly.

C. Recommendations

Following these events, Independent Counsel and the CAC have three broad recommendations for HPD relating to gathering and using information or intelligence to prepare for or respond to protest events. First, NAMACC should continue its focus on learning and developing best practices for intelligence usage. This progression can come by addressing policing of protests through review of relevant literature and through collaboration with other departments. Second, HPD should use its intelligence as a means to improve communication with stakeholders—both within and without the department. Officers “on the ground” often repeated statements about the possibility of out-of-town protesters coming to town, which was unconfirmed intelligence. Additionally, to the extent HPD or NAMACC develops any information about certain protests or its participants, this can allow HPD an opportunity to better facilitate the event, set clear expectations, and aim for reducing confrontation. Finally, HPD should improve its practice of validating or showing its validation of intelligence. As discussed above, there is confusion as to what is “good intelligence” and what HPD relied on. While some sources may carry heightened confidentiality, HPD should clarify what it knew, when it knew, why it relied on the information, and how it used the information. Adopting or expanding on these practices could improve outcomes, transparency, community relations, and public trust.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Cohen, Zachary. “Watchdog Reveals New Warning about Map of Capitol's Underground Tunnels Posted before Insurrection.” *CNN*, April 8, 2021. <https://www.cnn.com/2021/04/08/politics/capitol-riot-inspector-general/index.html>.

1. NAMACC should continue to develop “best practices” for gathering and using intelligence to address protests, demonstrations, or other similar events.

NAMACC is relatively new for HPD and local law enforcement. No doubt, a centralized and collaborative center used for gathering and analyzing information to deter, prevent, and investigate crime is a progressive and useful tool for law enforcement (and the community it serves). That said, like any tool, the user must train properly and handle responsibly.

Chief McMurray emphasized that he has taken steps to meet with leaders of other departments to learn how they established and operated similar intelligence centers. Additionally, NAMACC receives assistance from agencies like ALEA, the FBI, and the JTFF. These collaborations should continue, especially in assisting with preparing for large events. This type of peer knowledge sharing has been recommended in an oft-cited report on policing protests.²⁶⁴ Departments should turn to other agencies that have successfully handled similar incidents to exchange information on best practices.²⁶⁵ Coming out of these events and as more reviews of police are conducted, HPD should identify jurisdictions that faced issues similar to what happened in Huntsville and discuss how to prepare for, facilitate, and respond to demonstrations. However, HPD should be discerning when identifying advising departments.²⁶⁶ While some departments may have skill with physical tactics for responding to crowds, it is important to also identify departments where large crowds remained peaceful or that have not faced legal scrutiny for their tactics.²⁶⁷ Although, departments that are frank about past failures can also be valuable sources of information in learning how to improve.²⁶⁸ Ultimately, HPD should focus on identifying departments with expertise in gathering and deploying intelligence tools successfully and explore how to apply those lessons to the needs of Huntsville to avoid a one-size-fits-all approach.

2. HPD should use intelligence tools to improve communication with participants.

While not always an easy task, creating dialogue with protest organizers may go a long way in reducing tensions and improving protest outcomes. While HPD had

²⁶⁴ Maguire, Edward R., and Megan Oakley. “Policing Protests—Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police,” January 2020, 58–60. <https://static1.squarespace.com/static/5b293370ec4eb7e463c960e6/t/601d60d2a7f98e73c3dbec05/1612538076086/Policing+Protests.pdf>.

²⁶⁵ *Id.* at 58–59.

²⁶⁶ *See id.* at 59.

²⁶⁷ *See id.*

²⁶⁸ *See id.* at 60.

some communications with organizers prior to June 1 and 3, we encourage increased dialogue is encouraged. There are multiple benefits to this approach. One, police gather more information on what to expect from the event in advance and on how to prepare safely. Two, event participants can gather their own information from police and know what to expect from police as far as what conduct will and will not be tolerated. Additionally, both police and protesters can discuss how to best facilitate the event and how each can help promote a peaceful and expressive event. Finally, the informed communications can improve the development of “human capital,” both for this event and for future relations.

A primary, and obvious, use of intelligence techniques is to learn what the protest is about. “The first component is education. You might think of it as intelligence, but it’s just gathering information about the event, the organizers, and their aims. You want to know what they’re planning to do and why.”²⁶⁹ Making this a first goal will help with the other goals of facilitation, communication, and differentiation.²⁷⁰ HPD should continue to use its avenues of intelligence gathering—social media, community contacts, confidential sources—to identify events and participants.²⁷¹ The department should educate itself, but it should also continue to show restraint so as not to cross constitutional lines or abuse community trust by overreaching or targeting certain groups.²⁷²

The next step is to use the intelligence to communicate and then use the communication for educating the department. After gathering open-source background information to identify events, organizations, issues, and moderate participants (if any), police should attempt to communicate with the participants and the public.²⁷³ The goals should be to exchange information so that police can learn what issues the protest seeks to address, learn what the participants want to do as part of their protest, and then develop a nuanced tailored approach that seeks to provide an expressive but safe outlet to do so.²⁷⁴ While it may be preferable to find and speak with an event “leader,” many newer demonstrations are more fragmented and leaderless.²⁷⁵ Thus, police instead should try to cultivate relationships—both immediately before events and as a normal course—with moderate community members that are regularly involved with these events so that

²⁶⁹ Police Executive Research Forum (“PERF”). “The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned,” 2018, 20. <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf>.

²⁷⁰ *Id.*

²⁷¹ Maguire & Oakley, *supra* note 264, at 58.

²⁷² *Id.*

²⁷³ *See id.* at 57; PERF, *supra* note 269, at 55–56.

²⁷⁴ *See* Maguire & Oakley, *supra* note 264, at 57–58; PERF, *supra* note 269, at 56.

²⁷⁵ PERF, *supra* note 269, at 55–56.

police have a liaison with the protesters. This will allow the police to become informed and shape their approach while permitting the protesters to see that police are trying to cooperate and facilitate rather than suppress the event. Admittedly, as the events of June 1 and 3 progressed, the original organizers of the planned events either left or lost control of the crowds, and the crowds lost structure. Accordingly, HPD did not have the benefit of identifying a liaison that could communicate with the crowd effectively or steer protesters peacefully.

HPD should also use intelligence-based communication to inform the public and attendees in general. For example, if there are set times for events, HPD could communicate that. If activities will take place in certain areas, HPD can make that known. If HPD is going to direct pedestrians or vehicles through certain routes, they can communicate that. While this Report addresses communication in more detail elsewhere, this section seeks to emphasize how intelligence gathering can facilitate that communication more effectively.

Informed communication also can help police build “human capital,”²⁷⁶ or as further described:

“[B]y understanding the social identities of groups in the crowd, it is possible to know what the aims of the groups are, whether and how to support them, the forms of police action that might antagonize them and make them more sympathetic to violent elements in the crowd.” This type of information should feature prominently in police intelligence briefings, in the selection of strategies and tactics, and in the way police address the media, whether through conventional sources or social media. This information will help police develop more balanced approaches to protest policing that are more commensurate with the potential threat. This information is especially vital when preparing for events that may attract both protesters and counter-protesters, because there is often greater potential for violence at such events.²⁷⁷

Taking the time to develop this information and to build communication may curb negative and violent outcomes. As has been recognized:

A riot is sometimes a sign that police failed earlier in the process to anticipate it, to put in place appropriate preventive measures, or to address the issues or conditions within their control that may have led to the riot. A fundamental guiding principle is that police should invest

²⁷⁶ *Id.* at 56.

²⁷⁷ Maguire & Oakley, *supra* note 264, at 58.

at least as much energy in preventing riots as in preparing to respond to them.²⁷⁸

While HPD should prepare tactically to respond to a large and potentially hostile event, the department should employ equal efforts to create a dialogue with participants, to the extent possible.

That said, police often cannot coordinate with participants either because police cannot find moderate participants or leaders, or those participants are unwilling to cooperate. To that end, police should attempt to clearly communicate expectations and plans in advance of the event. For example, law enforcement should communicate that it will allow protesters to gather on sidewalks or in the park, but if the crowd crosses into certain areas they will be removed or if property damage begins the event will be canceled.²⁷⁹ These “rules of engagement” should also be communicated clearly throughout the department (and to assisting agencies), and law enforcement actions should also be consistent with the warnings given and from event to event.²⁸⁰ The goal is that even if protesters will not verbally collaborate or communicate, police have established their expectations through notifications and practice.²⁸¹

Intelligence-based communication can also differentiate between peaceful protesters and agitators that may wish to do violence.²⁸² Police should focus enforcement actions on those individuals or groups that are actually being violent.²⁸³ Employing this differential approach may help avoid alienating moderate members of the crowd that wish to protest lawfully while curtailing criminal elements within the crowd.²⁸⁴ Additionally, as HPD sought here, police at protests should make arrests sparingly.²⁸⁵ Police should use force and restrictive barriers on limited bases and as last resorts.²⁸⁶ That said, officer safety is also a significant concern, thus the goal of deploying resources to address individuals within a crowd need to be weighed against the risk of officer injuries.²⁸⁷ To promote this process, using embedded personnel in the crowd and live video footage (such as UAVs) may

²⁷⁸ *Id.* at 63.

²⁷⁹ PERF, *supra* note 269, at 58.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² See Maguire & Oakley, *supra* note 264, at 12–13.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 13.

²⁸⁷ *Id.*

help provide real-time information and assist with targeting those engaged in illegal activities.

3. HPD should be more transparent about how it gathers and uses intelligence.

Coming out of this review, what drove HPD to respond the way it did to the events is not clear. To be sure, Chief McMurray discussed several factors and matrices for assessing information and potential threats. However, some of those assumptions were cursory or were contradicted by other statements. Additionally, NAMACC’s silence on its processes further compounds this issue. As discussed above, it is unclear what specific information NAMACC and HPD determined to be actionable intelligence, how they validated some of that information as being a credible threat, or why they investigated some but not other information. Again, not all information is subject to public disclosure given its sourcing and sensitivity. Independent Counsel recognizes that some information may be classified or would have grave consequences if made public. That said, more transparency from HPD or NAMACC regarding how it reached certain conclusions may improve community response. The CAC encourages HPD to include a more robust discussion of intelligence as part of its after-action reports and to be prepared to more specifically identify, when appropriate, sources of intelligence that led to certain police action. Achieving this goal may result from better documentation of intelligence or developments as they are received or occur²⁸⁸ and form a more coordinated communications strategy with the public.

III. HPD Conduct in General

Again, we summarize below our observations, conclusions, and—where appropriate—recommendations for potential action by the Huntsville City Council. This is a summary only, a summary that focuses on highlights and particular points of interest. It is not a substitute for reading and considering the entire Report.

First, we address particular issues most often raised by citizens before the Huntsville City Council, the CAC, Independent Counsel, or the media. Second, we consider broader issues from the overall review.

A. Particular Issues Frequently Raised

Several common themes or complaints arose in the immediate aftermath of the Floyd protests. First, we frame the issue; then we provide our observations and conclusions; and finally, we offer, where appropriate, recommendations.

²⁸⁸ Chief McMurray admits that recording events as they occurred is an area for potential improvement.

1. Rubber Bullets

Witnesses testified that law-enforcement officers used rubber bullets, a “less lethal” munition, as a means of crowd control during the Floyd protests; that the deployment of rubber bullets was inappropriate and excessive, given the circumstances; and that, even if it were appropriate to resort to rubber bullets, officers discharged them in a manner inconsistent with appropriate use.

a. *Summary observations and conclusions*

The evidence related to the use of force that is of perhaps the greatest concern to the public—the firing of rubber bullets—is not entirely clear. MCSO used them; HPD may or may not have used them. Given the ballistics and characteristics of the other types of rounds HPD used, a layperson unfamiliar with such munitions could conclude that they were, in fact, “rubber bullets” when they were not. On the other hand, there is some evidence to indicate an HPD officer may have fired “rubber bullets” from a less lethal 12-gauge shotgun on June 3. Audio from BWC footage reflects an HPD officer on June 3 saying he fired five “finned” rounds from his shotgun. The officer’s description of the rounds as “finned” is relevant because it matches HPD’s description of a rubber bullet as a “rubberized device which has stabilizer fins on it.” That officer is no longer with HPD.

b. *Recommendations*

Because we lack evidence about the tactical context in which five “rubber bullets” may have been deployed by an HPD, we do not express any views about their use in that instance. At a minimum, however, the modest amount of evidence before us indicates that there are inventory control and oversight issues about such munitions that should be addressed.

2. Rooftop snipers aiming into crowds

During the Floyd protests, officers were visible atop the Madison County Courthouse pointing the rifles into the crowd.

a. *Summary observations and conclusions*

The officers on top of the Madison County Courthouse were apparently using their rifle scopes as binocular-substitutes to observe the crowd. These snipers were officers from MCSO and from MPD. No HPD officers were involved in this conduct. When questioned about this practice, HPD Chief McMurray testified that although it is wise to secure the tops of buildings in a scenario such as the Floyd protests, he would not allow his officers to use rifle scopes in that fashion.

b. *Recommendations*

Because the snipers were not HPD officers, we do not have an *HPD-specific* recommendation on their deployment. We have concerns about the snipers regarding command and control, which we discuss below.

3. The use of “beanbag” shotguns against protesters

Another form of less lethal munitions, so-called “beanbag” rounds, were deployed against protesters.

a. *Summary observations and conclusions*

HPD officers deployed a significant number of beanbag rounds. Some of those instances appear to violate HPD policies regarding the use of less lethal force. Although protesters prior to being shot with beanbags were throwing items such as water bottles, trash cans, and traffic cones in the officers’ direction, those items (with at least one exception) do not appear to land near the officers. Because HPD did not produce any training records concerning beanbag rounds—or training records about the use of less lethal force at all, for that matter—we do not know the nature, frequency, or recency of such training (if any) given to the officers. Because HPD did not allow us to interview any officers (other than Chief McMurray) involved in the Floyd protests, we do not know what individual officers’ training was in this regard; what orders they were or were not given individually or collectively about beanbags; or whether the officers in charge of such munitions followed HPD policies.

b. *Recommendations*

HPD should produce a full record regarding the deployment of beanbags at the Floyd protests, especially with regard to training of line officers involved in the Floyd protests; the process by which beanbag shotguns (and rounds) were distributed, used, and accounted for; and any reviews or disciplinary actions taken for beanbag use. Given the limited information we have, it is not feasible to make more detailed recommendations.

4. The use of “drones” at the Floyd protests

Citizens complained about law-enforcement’s use of UAVs, claiming that the FAA regulates the use of drones and that their deployment in this context was a means of intimidation and an attempt to chill constitutionally protected rights of expression.

a. *Summary observations and conclusions*

HPD Chief Mark McMurray testified that HPD’s drone operators are trained by third-party vendors who are themselves licensed by the FAA and who help obtain the appropriate certificates for HPD “pilots.” We believe that this practice is sufficient.

b. *Recommendations*

Unless a future regulatory flaw in HPD’s procedures comes to light, we do not have a specific recommendation about drones. Unmanned aerial vehicles are becoming a more common aspect of daily life and their simple presence, without more, cannot reasonably be construed as inappropriate. Also, UAVs provide a bird’s-eye view of events for better facilitation of large events.

5. The use of chemical agents to disperse protesters

Law-enforcement agencies used chemical agents to disperse protesters at the Floyd protests. Some citizens claimed that the deployment of chemical agents was an overreaction and an inappropriate or unlawful use of force.

a. *Summary observations and conclusions*

The use of teargas, pepper spray, and smoke as means of dispersing crowds is always unfortunate, but it is also a widely accepted tool when other measures have not been effective. Although some citizens complained of short-term ill effects, we are not aware of chronic, long-lasting harm arising from chemical agents that HPD deployed. On the other hand, there were individual instances when HPD officers used pepper spray in a manner that was, at a minimum, unprofessional and on multiple occasions in violation of HPD policy. HPD officers also made comments that demonstrated their lack of a serious appreciation of the use of pepper spray and further indicated ignorance of HPD policy.

b. *Recommendations*

As we discuss in greater detail throughout this Report, HPD officers expected to deploy chemical agents need extensive training in circumstances that would more closely resemble the challenging issues raised by the Floyd protests.

B. Broader Issues Noted in the Course of Review

Additional themes and issues arose during our review. As above, we discuss those matters first by framing the issue; then by providing our observations and conclusions; and finally, by offering, where appropriate, recommendations.

1. Poor communication

There was poor communication on multiple fronts, and for multiple reasons, that likely exacerbated the tensions and confusion in the Floyd protests and the recriminations that followed them.

- a. *Summary observations and conclusions*

One source of repeated complaints and confusion was the change of time for the end of the permitted protest on June 3. Although we find nothing nefarious in the change of time itself, the communications between HPD and the organizers; between the organizers and their membership; and between HPD and the public left much to be desired. In addition, HPD communication with the public after the Floyd protests was defensive; at times inconsistent; and open to charges of after-the-fact rationalization.

Finally, the audibility of orders to disperse—an important step before chemical agents are deployed or force applied—was compromised because HPD, apparently lacking appropriate systems, employed tools (such as bullhorns and the LRAD) that did not work well. Like many tools, the LRAD has an appropriate use and requires competent deployment. To be fair, the LRAD can be louder than the traditional megaphone or loudspeaker, but because the LRAD relies on narrowed and concentrated sound for effectiveness, its sound may not cover as broad of an area.²⁸⁹ Additionally, the siren or “area denial” function of the LRAD may be an effective means of dispersing a crowd, but care is required because of the high decibel level of that function.²⁹⁰

- b. *Recommendations*

Even in the context of fast-moving events—which the Floyd protests were—communications need to be informed, formal, consistent with policy, and redundant. Both the City and HPD have access to social media platforms. Messaging on those platforms before, during, and after such events will enhance communication and reduce tension. Although one hopes that HPD will not have many occasions in the future to communicate at the street level during such events, HPD should consider how best to broadcast dispersal orders and other messages in an extremely loud, fragmented, unsettled situation. HPD should further train with the LRAD to ensure it is used for optimal effectiveness balanced with appropriate restraint. Finally, HPD’s after-action reporting—both internally and to the City Council—needs to reflect ambiguity and uncertainty where appropriate; admit mistakes; and not overread its actions in the most positive light.

²⁸⁹ See *Edrei*, 892 F.3d at 529.

²⁹⁰ See *id.* at 529–30, 543–44.

2. Lack of self-awareness

HPD did not sufficiently appreciate the difficulties involved when law enforcement itself is the subject of the protest.

a. *Summary observations and conclusions*

Policing high profile civil unrest is difficult under the best of circumstances. Law-enforcement officers must guard against loss of human life and destruction of property while also guaranteeing constitutionally provided rights of expression and assembly—and they must do so in a fluid environment. Most HPD individual officers conducted themselves professionally during the Floyd protests, even in the face of uncalled-for provocation. On the other hand, HPD did not seem to appreciate that the dynamics are different when the subject matter of the protest is not an extraneous issue (immigration, for example, or abortion) but rather the police officers themselves. Rather than being in a traditional neutral role of monitoring antagonists and keeping them separate and safe, the police during the Floyd protests were—accurately or inaccurately—the almost exclusive subject of the demonstrations. In that context, ordinary decisions that one might take to control a crowd, such as the timing of deployment of officers in riot gear, take on a heightened significance that would be lacking (and not a problem) in the management of a potentially violent crowd, say, after a concert, or in the protection of a dignitary visiting Huntsville. In the Floyd protests, that heightened significance made matters worse.

b. *Recommendations*

With the caveat that HPD did not provide us any training records, we expect that HPD needs more training for this particular kind of event. Fortunately, Huntsville does not have an extensive history of civil unrest in the modern era. It is understandable how budgets, training, and focus related to civil unrest might take a backseat. A nationwide uprising over police use of force is not a concert or a visit by a high-ranking dignitary, however. Officers need and deserve to be trained in this very particularized problem.

3. Lack of command and control over inconsistent use-of-force policies

Although the Floyd protests revealed no significant HPD command and control problems in the traditional sense, other law enforcement agencies engaged in questionable tactics during the protests, within the city limits of Huntsville, without the approval of Chief McMurray, the Huntsville mayor, or the City Council.

a. *Summary observations and conclusions*

The law-enforcement response to the Floyd protests involved multiple agencies—primarily HPD, MCSO, MPD, and ALEA. HPD Chief McMurray

characterized the response as a “joint” effort, and there was indeed coordination among agencies. On the other hand, a “joint” response inevitably means that no one decisionmaker was in charge. Chief McMurray believes that, once the protests became focused on the Madison County courthouse, Madison County Sheriff Turner, in effect, became the commanding officer of the response and Chief McMurray his subordinate. We have not found legal support for that belief. Further, as discussed above, Chief McMurray noted his disapproval of deploying rubber bullets for crowd control and of the use of rifle scopes as binoculars, yet both practices—two of the more controversial that brought us to this point— were on display within the city limits of Huntsville by agencies over which the City Council has no control.

b. *Recommendations*

Madison County, the City, and Madison City should enter a MOU that will define the parameters of the use of force in instances where their law enforcement officers engage in joint operations like the Floyd protests. Such MOUs are common in both military and law enforcement operations where different sets of operators have a need to coordinate and deconflict different philosophical approaches to rules of engagement, escalation of force, and tactical procedures.

4. Lack of cooperation

HPD declined to make officers available for interview by the CAC and Independent Counsel, other than Chief McMurray, and either cannot or will not produce important categories of documents.

a. *Summary observations and conclusions*

In any review or investigation, access to documents and witnesses is critical if the investigator wishes to determine not only what is *supposed* to happen but what *actually* happened, and why. Policies can shed light on the organization, but such materials rarely reveal the granular detail of events—especially when those events are disputed—or the intent of individuals within the organization as they carry out their jobs. We were not allowed to interview any line police officers involved in the Floyd protests. HPD was concerned that officers forced to sit for an interview with the CAC—an “outside,” non-departmental entity—and its Independent Counsel would violate HPD’s human resources policy and thus give rise to an HR claim by the officers against the City; that statements by officers could increase the likelihood of disciplinary action against them for matters irrelevant to the protest events under review; that officers’ statements could create potentially adverse evidence against officers or the City in civil litigation; and that the offered precautions would not provide adequate criminal legal protection for officers. These concerns are understandable but unfounded, for reasons set out in detail later in this Report. Without being able to examine officers about critical matters peculiar to them—intent, orders (as they perceived them), training, munitions,

communications with protesters (as the officers perceived those communications)—it is difficult for us to present a complete picture. HPD’s intransigence on this point is unfortunate also for HPD itself: our guess is that, had we been able to interview officers who responded to the Floyd protests on June 1 and June 3, the officers may have been able to offer background and insight that would have been favorable to HPD.

b. *Recommendations*

The City Council should require a greater transparency from HPD.

5. Civilian police oversight review board

Both before and during our review, citizens raised the idea of creating a formal civilian police oversight review board.

a. *Summary observations and conclusions*

Several American cities—primarily large metropolitan areas—have a formal civilian police oversight review board. Other cities have a police department “ombudsman,” and still others have an officer who is internal to the local police department but who functions as an inspector general and reports outside the department. Although they differ in size, scope, responsibility, and authority, the common theme of these structures is independent review of police department actions. Like most policy options, there are pros and cons to police review boards. On the one hand, they are independent; professionally staffed with lawyers and investigators; cloaked with necessary authority; and, potentially, possess subpoena power or other tools to compel evidence. On the other hand, such boards can be expensive; readily politicized; “captured” by the very agency they are supposed to watch; and disproportionate to the needs of a municipality that is not a major metro area.

b. *Recommendations*

Given the reasonable arguments both for and against such a board, the CAC does not take a position either way. It is, however, a question that the City Council should consider in light of the Council’s broader governance and legislative duties.

Respectfully submitted,

Elizabeth H. Huntley

Jackson R. Sharman III

APPENDIX I: CITATIONS TO OTHER POLICE REVIEWS

City of Chicago Office of Inspector General’s report (February 2021). Cherone, Heather. “Chicago Police Botched Response to Protests, Unrest After George Floyd's Death: Watchdog,” February 18, 2021. <https://news.wttw.com/2021/02/18/chicago-police-botched-response-protests-unrest-after-george-floyd-s-death-watchdog>. (“CPD Report”).

Daniels, Deborah J., Sean L. Huddleston, and Myra C. Selby. Rep. *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*, February 23, 2021. <https://www.wfyi.org/files/wfyi/files/impd-review-panel-full-report.pdf>. (“IMPD Report”).

City of Lincoln, Nebraska, Public Overview (December 2020). “Public Overview: Law Enforcement Response May 29-June 2 Protests Riots.” Lincoln, NE: City of Lincoln, December 2, 2020. <https://bloximages.chicago2.vip.townnews.com/journalstar.com/content/tncms/assets/v3/editorial/a/da/ada08230-689e-514a-86df-8dfa19850586/5fc8561e9c426.pdf.pdf>. (“LPD Report”).

Newton (MA) Police Reform Task Force report (March 2021). Spears, Sonja, Derege B. Demissie, Jadeque Douglas, Malick Ghachem, Brian Henderson, Bill Hoch, Randy Johnson, et al. Rep. *Newton Police Reform Task Force: Recommendations*. Newport, MA: Strategy Matters, LLC, 2021. <https://www.newtonma.gov/home/showpublisheddocument?id=66884>. (NPD Report”).

New York City Department of Investigation report (December 2020). Garnett, Margaret. Rep. *Investigation into NYPD Response to George Floyd Protests*. New York, NY: New York City Department of Investigation, 2020. <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>. (“NYPD Report”).

Philadelphia City Controller’s report (January 2021). Rhynhart, Rebecca. Rep. *Independent Investigation Into the City of Philadelphia’s Response to Civil Unrest*. Philadelphia, PA: Office of the Controller, 2021. <https://3og1ev1uvq3u3skase2jhb69-wpengine.netdna-ssl.com/wp-content/uploads/2021/01/Civil-Unrest-Report-Final.pdf>. (“PPD Report”).

EXHIBIT

A



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

29 July 2020

Via electronic mail

Chief Mark McMurray
Huntsville Police Department
815 Wheeler Avenue NW
Huntsville, Alabama 35801
mark.mcmurray@huntsvilleal.gov

Re: Preservation of Evidence and Records

Dear Chief McMurray:

As you know, the Huntsville City Council enacted Resolution No. 20-487 (“the Resolution”), which, among other things, authorizes the Huntsville Police Citizens Advisory Council (“HPCAC”) “[t]o fully review the protests and demonstrations which began on or about May 30, 2020, especially those which occurred on June 1 and 3, 2020, as to the interactions between the protestors and demonstrators and the Huntsville Police Department [(“HPD”)]” HPCAC has retained our firm as independent counsel to assist with HPCAC’s investigation.

The Resolution further provides:

In conducting their review, HPCAC will have access to any resources at the Huntsville Police Department, including access to employees involved in the events to be investigated and documentary evidence, such as video footage from aerial surveillance and body cameras, provided employees shall retain any constitutional or procedural protections to which they are entitled under the constitution and/or statutes of the United States and/or the State of Alabama or the Employee Policies and Procedures of the City of Huntsville

To that end, and to ensure a thorough and fair investigation, please ensure that HPD and its personnel make all reasonable efforts to preserve all documents and materials relating to, addressing, discussing, documenting, or otherwise touching upon these protests and HPD’s preparations for and responses to the protests. While not an exhaustive list, this preservation should include all incident/offense reports, arrest reports, call logs, CAD reports, video recordings, audio recordings (including telephone, radio, and direct-connect communications), witness statements, physical evidence, duty rosters, personnel assignments, complaints, use-of-force reports or records, training materials or records, memoranda, notes, correspondence

Chief Mark McMurray

29 July 2020

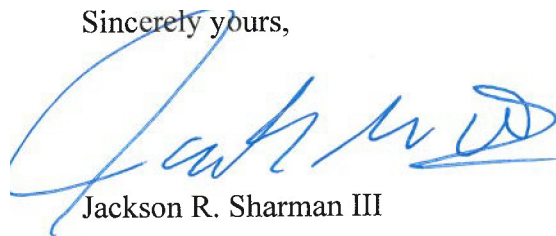
Page 2

(including within the City of Huntsville and with outside agencies), intelligence briefs or reports, electronic mail, text messages (SMS or other platforms), directives, or policies. Specifically, please ensure that all video and audio recordings (*e.g.*, body cameras or in-car cameras) from June 1 and June 3, 2020, are downloaded, saved, and preserved prior to systematic or routine overwriting or deletion.

Under separate cover, we will provide HPD with more detailed requests for specific information and materials. Please do not hesitate to contact me with any questions or concerns.

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

cc: Lt. Jonathan Ware (*via electronic mail only*) (jonathan.ware@huntsvilleal.gov)
Vicki Guerrieri (*via electronic mail only*)
Elizabeth H. Huntley (*via electronic mail only*)
Robert J. "Jay" Sewell (*via electronic mail only*)
Amaobi J. Enyinnia (*via electronic mail only*)



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

30 July 2020

Via electronic mail

Trey Riley
City Attorney for the City of Huntsville, Alabama
P.O. Box 308
Huntsville, Alabama 35804
trey.riley@huntsvilleal.gov

Re: Preservation of Evidence and Records

Dear Mr. Riley:

As you know, the Huntsville City Council enacted Resolution No. 20-487 (“the Resolution”), which, among other things, authorizes Huntsville Police Citizens Advisory Council (“HPCAC”) “[t]o fully review the protests and demonstrations which began on or about May 30, 2020, especially those which occurred on June 1 and 3, 2020, as to the interactions between the protestors and demonstrators and the Huntsville Police Department [(“HPD”)]” HPCAC has retained our firm as independent counsel to assist with HPCAC’s investigation.

The Resolution further provides:

In conducting their review, HPCAC will have access to any resources at the Huntsville Police Department, including access to employees involved in the events to be investigated and documentary evidence, such as video footage from aerial surveillance and body cameras, provided employees shall retain any constitutional or procedural protections to which they are entitled under the constitution and/or statutes of the United States and/or the State of Alabama or the Employee Policies and Procedures of the City of Huntsville

To that end and to ensure a thorough and fair investigation, we have already requested that HPD preserve all materials relevant to the investigation. Additionally, we would ask you, on behalf of the City of Huntsville (“the City”), to please ensure that the City and its departments, councils, commissions, or boards and their respective personnel make all reasonable efforts to preserve all documents and materials relating to, addressing, discussing, documenting, or otherwise touching upon these protests and the City’s preparations for and responses to the protests. While not an exhaustive list, this preservation should include all

Trey Riley
30 July 2020
Page 2

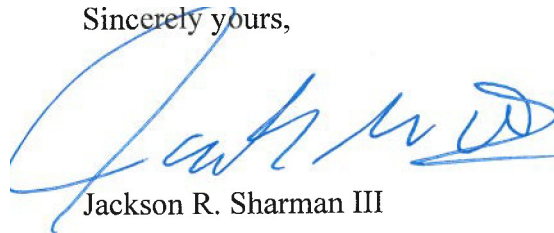
reports, call logs, video recordings (including any city-owned or operated webcams), audio recordings (including telephone, radio, and direct-connect communications), witness statements, duty rosters, personnel assignments, complaints, training materials or records, memoranda, notes, correspondence (including within the City of Huntsville and with outside agencies), intelligence briefs or reports, electronic mail, text messages (SMS or other platforms), directives, or policies. Specifically, please ensure that all video and audio recordings from June 1 and June 3, 2020, are downloaded, saved, and preserved prior to systematic or routine overwriting or deletion.

In addition, please ensure that, with regard to the events of June 1 and 3, all communications – text messages, emails, voicemail messages, and the like – between and among the City (and its departments, councils, commissions, or boards) on the one hand and law enforcement (including the Huntsville Police Department) on the other are preserved.

Please do not hesitate to contact me with any questions or concerns.

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

cc: Mayor Thomas M. Battle (*via electronic mail only*)
Vicki Guerrieri (*via electronic mail only*)
Elizabeth H. Huntley (*via electronic mail only*)
Robert J. “Jay” Sewell (*via electronic mail only*)
Amaobi J. Enyinnia (*via electronic mail only*)



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

30 July 2020

Via electronic mail

Noel Barnes
General Counsel
Alabama Law Enforcement Agency
201 South Union Street, Suite 300
Montgomery, Alabama 36104-2889
noel.barnes@alea.gov

Re: Preservation of Evidence and Records

Dear Mr. Barnes:

As you may know, the Huntsville City Council enacted Resolution No. 20-487 (“the Resolution”), which, among other things, authorizes Huntsville Police Citizens Advisory Council (“HPCAC”) “[t]o fully review the protests and demonstrations which began on or about May 30, 2020, especially those which occurred on June 1 and 3, 2020, as to the interactions between the protestors and demonstrators and the Huntsville Police Department [(“HPD”)]” HPCAC has retained our firm as independent counsel to assist with HPCAC’s investigation.

It is our understanding that officers from the Alabama Law Enforcement Agency (“ALEA”) assisted the City of Huntsville in preparation for or in response to the protests. We recognize that this assistance is consistent with mutual-aid operations that are common, especially between state and local governments.

To ensure a thorough and fair investigation, we have already requested that HPD and the Madison County Sheriff’s Office preserve all materials relevant to the investigation. To further assist with our efforts, we would ask you, on behalf of ALEA, to please ensure that ALEA and its personnel make all reasonable efforts to preserve all documents and materials relating to, addressing, discussing, documenting, or otherwise touching upon these protests and ALEA’s preparations for or responses to the protests or ALEA’s participation in the preparations or responses in conjunction with HPD or the City of Huntsville. While not an exhaustive list, this preservation should include all incident/offense reports, arrest reports, call logs, CAD reports, video recordings, audio recordings (including telephone, radio, and direct-connect communications), witness statements, physical evidence, duty rosters, personnel assignments, complaints, use-of-force reports or records, training materials or records, memoranda, notes, correspondence (including within the ALEA and with outside agencies), intelligence briefs or reports, electronic mail, text messages (SMS or other platforms),

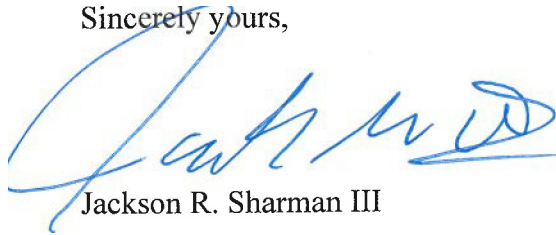
Noel Barnes
30 July 2020
Page 2

directives, or policies. Specifically, please ensure that all video and audio recordings (e.g., body cameras or in-car cameras) from June 1 and June 3, 2020, are downloaded, saved, and preserved prior to systematic or routine overwriting or deletion.

Please do not hesitate to contact me with any questions or concerns.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Sharman III", is written over the typed name below.

Jackson R. Sharman III

cc: Vicki Guerrieri (*via electronic mail only*)
Elizabeth H. Huntley (*via electronic mail only*)
Robert J. "Jay" Sewell (*via electronic mail only*)
Amaobi J. Enyinnia (*via electronic mail only*)



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

30 July 2020

Via electronic mail

Jeff Rich
County Attorney for Madison County, Alabama
100 Northside Square
Huntsville, Alabama 35801
jrich@madisoncountyal.gov

Re: Preservation of Evidence and Records

Dear Mr. Rich:

As you may know, the Huntsville City Council enacted Resolution No. 20-487 (“the Resolution”), which, among other things, authorizes Huntsville Police Citizens Advisory Council (“HPCAC”) “[t]o fully review the protests and demonstrations which began on or about May 30, 2020, especially those which occurred on June 1 and 3, 2020, as to the interactions between the protestors and demonstrators and the Huntsville Police Department [(“HPD”)]” HPCAC has retained our firm as independent counsel to assist with HPCAC’s investigation.

It is our understanding that Madison County, Alabama, (“the County”), and specifically the Madison County Sheriff’s Office (“MCSO”) assisted the City of Huntsville in preparation for or in response to the protests. We recognize that this assistance is consistent with mutual aid operations that are common, especially between county and city governments.

To ensure a thorough and fair investigation, we have already requested that HPD preserve all materials relevant to the investigation. To further assist with our efforts, we would ask you, on behalf of the County, to please ensure that the County and its departments (specifically, MCSO), councils, commissions, or boards and their respective personnel make all reasonable efforts to preserve all documents and materials relating to, addressing, discussing, documenting, or otherwise touching upon these protests and the County’s preparations for or responses to the protests or the County’s participation in the preparations or responses in conjunction with HPD or the City of Huntsville. While not an exhaustive list, this preservation should include all reports, call logs, video recordings (including any county-owned or operated webcams), audio recordings (including telephone, radio, and direct-connect communications), personnel assignments, records of equipment provided or used, complaints, memoranda, notes, correspondence (including within the County and with outside agencies), intelligence briefs or reports, electronic mail, text messages (SMS or other

Jeff Rich
30 July 2020
Page 2

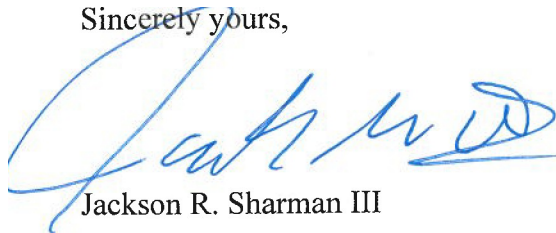
platforms), or directives. Specifically, please ensure that all video and audio recordings from June 1 and June 3, 2020, are downloaded, saved, and preserved prior to systematic or routine overwriting or deletion.

With specific regard to MCSO, we ask that the County preserve all incident/offense reports, arrest reports, call logs, CAD reports, video recordings, audio recordings (including telephone, radio, and direct-connect communications), witness statements, physical evidence, duty rosters, personnel assignments, complaints, use-of-force reports or records, training materials or records, memoranda, notes, correspondence (including within the MCSO and with outside agencies), intelligence briefs or reports, electronic mail, text messages (SMS or other platforms), directives, or policies. Specifically, please ensure that all video and audio recordings (*e.g.*, body cameras or in-car cameras) from June 1 and June 3, 2020, are downloaded, saved, and preserved prior to systematic or routine overwriting or deletion.

Please do not hesitate to contact me with any questions or concerns.

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

cc: Vicki Guerrieri (*via electronic mail only*)
Elizabeth H. Huntley (*via electronic mail only*)
Robert J. "Jay" Sewell (*via electronic mail only*)
Amaobi J. Enyinnia (*via electronic mail only*)

EXHIBIT

B

BEFORE THE HUNTSVILLE CITIZENS POLICE ADVISORY COUNCIL

To:)
Chief Mark McMurray) *In re* Review Pursuant to
Huntsville Police Department) Huntsville City Council
815 Wheeler Avenue NW) Resolution No. 20-487
Huntsville, Alabama 35801)

REQUESTS FOR DOCUMENTS, MATERIALS, AND INFORMATION

Pursuant to the authority granted by Huntsville City Council Resolution No. 20-487, the Huntsville Police Citizens Advisory Council requests you to produce the documents, materials, and information described below and according to the instructions and definitions provided. Please respond within thirty (30) days of service of these requests by producing the requested documents, materials, and information to counsel identified below.

Definitions

Throughout these requests, the following words and phrases will have the indicated meanings unless specified otherwise:

1. “You,” “your,” or “HPD”: This will refer to the Huntsville (Alabama) Police Department, including its officers (full-time, part-time, or reserve), administration, personnel or employees (both sworn and civilian), and other representatives.
2. “The City”: This will refer to the municipality of the City of Huntsville, Alabama, including its departments, agencies, councils, boards, commissions, officials (elected, appointed, or otherwise), personnel or employees, agents, or other representatives.
3. “HPCAC” or “CAC”: This will refer to the Huntsville Police Citizens Advisory Council, including its constituent members and the council as a whole.
4. “Complaint”: This will refer to any notice or communication HPD or the City has received from members of the public relating to or reporting incidents of alleged misconduct by

HPD, the City, or other law enforcement or public agents. This encompasses oral (including by telephone) or written notices or communications, including via electronic media (*e.g.*, electronic mail or via online submission).

5. “The Protests”: This will refer to any protest, demonstration, riot, rally, march, parade, or other similar gathering concerning racial concerns, social justice, or law enforcement policies or practices that occurred within the city limits or police jurisdiction of Huntsville, Alabama, between (and including) May 30, 2020, and June 3, 2020.

6. “Document(s)”: This will refer to any writing of any kind, including originals and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including, but without limitation, correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, emails, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guaranties, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any sort of conversation, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, worksheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or oral records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which you have knowledge, or which are now or were formerly in your actual or constructive possession, custody, or control. It will also include text messages or instant messages sent or received via cellular, internet, or other wireless communication, whether sent or received on devices that are the property of HPD or of others.

Instructions

General Instructions

1. Items and documents to be produced include all items and documents in your possession, custody, or control, wherever located. Without limitation on the term “control,” an item or document is deemed to be in your control if you have the right to secure that item or document or copies thereof from another person.

2. All requests for documents include the original final version of the document (or a copy, if the original is not available) and all drafts, and also the original and all copies which are not identical, whether by reason of handwritten notes or otherwise.

3. All documents that respond, in whole or in part, to any part or clause of any paragraph of this request shall be produced in their original form and in their entirety, including all attachments and enclosures. All documents that are attached to documents called for by this request shall be produced, even if they are not otherwise responsive to this subpoena. Documents shall be produced in the order and in the file folders in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in that form.

4. Any document that is requested but withheld on a claim of privilege must be preserved. If you assert that the document contains privileged material, produce the entire document with the claimed privileged material deleted. For any document or any portion of any document withheld under a claim of privilege, submit a privilege log from your counsel or one of your employees in which you identify the document by author(s), addressee(s), date, number of pages, current location, and subject matter. Specify the nature and basis of the claimed privilege and the paragraph of this demand for documents to which the document is responsive, and

identify each person to whom the document or its contents, or any part thereof, has been disclosed.

Specifications for Electronic Production

The CAC requests that all documents be produced in an electronic format. Data can be provided on CD, DVD, or USB 2 external hard drive. With the understanding that advanced consultation with CAC counsel may be necessary before electronic information is produced, the following is provided for general guidance.

Electronic Data

Electronic data (i.e., native production of electronic files), should be provided in a form that is readily usable:

- (1) *E-mail*. The CAC will accept MS-Outlook PST files, MS Outlook MSG files, Lotus Notes NSF files or MIME-encoded text or EML files. Any other electronic submission of e-mail must be approved in advance.
- (2) *Native production*. The CAC requests Electronically Stored Information (“ESI”) in its native file format whenever possible. If the electronic files are readable only through proprietary software, the files will need to be produced both in their native form and, in addition, in a format readable by off the shelf or open source software whenever possible. Provide any free “readers” that are associated with the proprietary software that would permit a third party to review the document in its native format, to the extent permitted by your software license. Electronic files must be copied in a way that preserves metadata.
- (3) *Audio/Video production*. Whenever possible, audio and video should be produced in files that are playable using readily available playback software. For audio, acceptable file types include WAV, MP3, and WMA. For video, acceptable file types include MPG, MP4, AVI and WMV. Media files requiring proprietary codecs and/or playable only with proprietary software should be converted to one of these file types before production.
- (4) *PDF files*. PDF files should be text-enabled and any security settings disabled that would prevent use of the images in litigation support software.

- (5) *Security and Usability*. All submissions of electronic data must be free of computer viruses. Any passwords protecting documents or files when opened in their native program should be removed. If encryption and passwords are necessary, add all documents on a disc volume to a single password-encrypted ZIP file. Transmission of material which has personal identifiers should comply with applicable federal law. The files must be received in a form in which they are readily usable.

Scanned Images

If the documents are scanned, the CAC requests they be provided in single page TIFF Group IV format with an IPRO load file showing the box, folder, document and attachment range boundaries. Text files created by an optical character recognition process (“OCR”) should be included with the TIFF images and should be reflected in the load file. In the absence of an image load file, scanned documents should be produced as either multi-page TIFF or PDF files. Individual multi-page TIFF or PDF files should be broken up based on logical document boundaries and should be named by beginning bates number.

When submitting documents that have been scanned, adhere to the following specifications:

- (1) Most images should be scanned in black and white, at 300 dpi resolution. If necessary to avoid excessive “speckling” and to avoid interference with OCR, some documents can be provided at 200 dpi resolution.
- (2) Images containing relevant color or grayscale information should be scanned in color or grayscale at 200 dpi resolution.
- (3) Files should be bates-numbered and named with a two or three letter prefix which readily identifies the source of the documents and should have a counter range consistent with the maximum volume of production.
- (4) Regardless of format, all images should be scanned so that logical document boundaries are reflected in either the image load file, the multi-page image breaks, or both.

Requests

1. Please produce all incident/offense reports created by HPD relating to or arising out of the Protests.
2. Please produce all arrest reports for arrests made by HPD or other law enforcement officers relating to or arising out of the Protests.
3. Please produce all call logs, computer-aided dispatch (“CAD”) logs or reports, or other documents concerning complaints, calls for service, or officer-initiated activity relating to or arising out of the Protests.
4. Please produce all records, documents, notes, cards, or other materials (written or electronic) documenting contacts or field interviews with any individuals relating to or arising out of the Protests.
5. Please produce all audio recordings of telephone calls relating to or arising out of the Protests.
6. Please produce all audio recordings of all radio traffic (including dispatch, in-car, handheld/walkie-talkie, direct-connect, push-to-talk, or other audio communications) relating to or arising out of the Protests.
7. Please produce all video recordings (including in-vehicle cameras or body-worn cameras) relating to our arising out of the Protests.
8. Please produce all reports, documents, or other materials (written or electronic) documenting any officer’s use of force—including soft-empty-hand control, hard-empty-hand control, grappling or ground fighting, impact or intermediate weapons (*e.g.*, batons), chemical agents (*e.g.*, OC spray, CS, CN, teargas), conducted energy weapons (*e.g.*, Tasers), less-than-lethal projectiles (*e.g.*, rubber bullets, beanbags), distraction devices (*e.g.*, flashbangs, smoke

grenades), or firearms—relating to or arising out of the Protests. This request includes any data downloads or other computerized or digital records documenting the use and functioning of a conducted energy weapon. Additionally, this request includes identifying the specific equipment used, including providing:

- a. Equipment manufacturer;
- b. Equipment model name and number;
- c. Caliber (if applicable);
- d. Serial number (if applicable); and
- e. The name of the officer using the equipment.

9. For each instance of force documented in Request No. 8 above, please provide all records documenting or certifying the training the respective officer received relating to that use of force, including initial certifications or trainings and any subsequent, supplemental, or recertification training received. The request includes providing all relevant training certificates.

10. Please produce all training or instruction materials—including written or electronic manuals, books, videos, webinars, slideshows, or other materials—relating to the any methods of force identified in response to Request No. 8 above.

11. Identify all employees or personnel within HPD certified or authorized to provide training for the methods of force identified in response to Request No. 8 above.

12. Please produce complete copies of all policies, procedures, directives, standard operating procedures, or other documents that provide direction and guidance for HPD that have been published, developed, produced, adopted, or implemented by HPD.

13. Please produce all policies, procedures, directives, standard operating procedures, or other documents addressing document retention, including storage, deletion, or retention of audio or video recordings.

14. Please produce all records, logs, documents, or other materials (whether written or electronic) documenting the collection, receipt, transfer, chain of custody, storage, destruction, or any other disposition of any physical evidence collected during or relating to the Protests.

15. Please produce all written statements or memoranda describing any interviews or interrogations of any suspect, offender, witness, or other individual involved with or knowledgeable of any incident relating to or arising out of the Protests.

16. Please produce all correspondence—including written or electronic letters, memoranda, electronic mail, text messages, instant messages, chats, or mobile data terminal communications—relating to, discussing, or arising out of the preparations for, oversight of, or responses to the Protests.

17. Please provide all materials—including written documents or records, audio recordings, video recordings, or internet submissions—documenting, relating to, addressing, or responding to any complaints HPD received regarding conduct of HPD, its personnel, or other law enforcement relating to or arising out of the Protests.

18. Please identify all law enforcement officers—whether from HPD or other law enforcement agencies—that participated in the planning for, preparations for, response to, patrolling of, or any other activities relating to or arising out the Protests. Additionally, please produce any applicable duty rosters, shift rosters, unit lists, CAD reports, or other similar materials identifying personnel working in preparation for or in response to the Protests.

19. Please produce all reports, memoranda, briefings, notes, or other materials (written or electronic) that provided background information or intelligence received, created, or distributed by HPD in preparations for or responses to the Protests. This includes any reports or materials from any federal, state, or local law enforcement agencies or support services, including North Alabama Multi-Agency Crime Center (“NAMACC”); Regional Organized Crime Information Center (“ROCIC”); Regional Information Sharing Systems (“RISS”); Alabama Fusion Center, Alabama Criminal Justice Information Center (“ACJIC”); Alabama Law Enforcement Agency (“ALEA”); Federal Bureau of Investigation; U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives; U.S. Department of Homeland Security; U.S. Department of Justice; U.S. Marshals Service; or U.S. Attorney’s Office(s). Please also provide relevant information and materials concerning informants (redacting any identifying information of any confidential sources), witnesses, community or civic groups, or any other sources (government or civilian).

20. Please produce all documents, presentations, slideshows, reports, or other demonstratives prepared or published by HPD relating to or created in response to the Protests or at the request of the City. This request includes materials addressed or presented by HPD before the Huntsville City Council on June 18, 2020, and July 29, 2020.

Dated: 3 August 2020

/s/ Jackson R. Sharman III
Counsel for Huntsville Citizens Police Advisory Council

OF COUNSEL:
Jackson R. Sharman III
jsharman@lightfootlaw.com
Elizabeth H. Huntley
ehuntley@lightfootlaw.com
Robert J. “Jay” Sewell
jsewell@lightfootlaw.com

Amaobi J. Enyinnia
ayennia@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203
(205) 581-0700
(205) 581-0799 (Facsimile)

BEFORE THE HUNTSVILLE POLICE CITIZENS ADVISORY COUNCIL

To:)
Trey Riley) *In re* Review Pursuant to
City Attorney) Huntsville City Council
City of Huntsville, Alabama) Resolution No. 20-487
P.O. Box 308)
Huntsville, Alabama 35804)

REQUESTS FOR DOCUMENTS, MATERIALS, AND INFORMATION

Pursuant to the authority granted by Huntsville City Council Resolution No. 20-487, the Huntsville Police Citizens Advisory Council requests you to produce the documents, materials, and information described below and according to the instructions and definitions provided. Please respond within thirty (30) days of service of these requests by producing the requested documents, materials, and information to counsel identified below.

Definitions

Throughout these requests, the following words and phrases will have the indicated meanings unless specified otherwise:

1. “HPD”: This will refer to the Huntsville (Alabama) Police Department, including its officers (full-time, part-time, or reserve), administration, personnel or employees (both sworn and civilian), and other representatives.
2. “You,” “your,” or “the City”: This will refer to the municipality of the City of Huntsville, Alabama, including its departments, agencies, councils, boards, commissions, officials (elected, appointed, or otherwise), personnel or employees, agents, or other representatives.
3. “HPCAC” or “CAC”: This will refer to the Huntsville Police Citizens Advisory Council, including its constituent members and the council as a whole.

4. “Complaint”: This will refer to any notice or communication HPD or the City has received from members of the public relating to or reporting incidents of alleged misconduct by HPD, the City, or other law enforcement or public agents. This encompasses oral (including by telephone) or written notices or communications, including via electronic media (*e.g.*, electronic mail or via online submission).

5. “The Protests”: This will refer to any protest, demonstration, riot, rally, march, parade, or other similar gathering concerning racial concerns, social justice, or law enforcement policies or practices that occurred within the city limits or police jurisdiction of Huntsville, Alabama, between (and including) May 30, 2020, and June 3, 2020.

6. “Document(s)”: This will refer to any writing of any kind, including originals and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including, but without limitation, correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, emails, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guaranties, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any sort of conversation, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, worksheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or oral records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which you have knowledge, or which are now or were formerly in your actual or constructive possession, custody, or control. It will also include text messages or instant messages sent or received via cellular, internet, or other

wireless communication, whether sent or received on devices that are the property of HPD or of others.

Instructions

General Instructions

1. Items and documents to be produced include all items and documents in your possession, custody, or control, wherever located. Without limitation on the term “control,” an item or document is deemed to be in your control if you have the right to secure that item or document or copies thereof from another person.
2. All requests for documents include the original final version of the document (or a copy, if the original is not available) and all drafts, and also the original and all copies which are not identical, whether by reason of handwritten notes or otherwise.
3. All documents that respond, in whole or in part, to any part or clause of any paragraph of this request shall be produced in their original form and in their entirety, including all attachments and enclosures. All documents that are attached to documents called for by this request shall be produced, even if they are not otherwise responsive to this subpoena. Documents shall be produced in the order and in the file folders in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in that form.
4. Any document that is requested but withheld on a claim of privilege must be preserved. If you assert that the document contains privileged material, produce the entire document with the claimed privileged material deleted. For any document or any portion of any document withheld under a claim of privilege, submit a privilege log from your counsel or one of your employees in which you identify the document by author(s), addressee(s), date, number of

pages, current location, and subject matter. Specify the nature and basis of the claimed privilege and the paragraph of this demand for documents to which the document is responsive, and identify each person to whom the document or its contents, or any part thereof, has been disclosed.

Specifications for Electronic Production

The CAC requests that all documents be produced in an electronic format. Data can be provided on CD, DVD, or USB 2 external hard drive. With the understanding that advanced consultation with CAC counsel may be necessary before electronic information is produced, the following is provided for general guidance.

Electronic Data

Electronic data (i.e., native production of electronic files), should be provided in a form that is readily usable:

- (1) *E-mail*. The CAC will accept MS-Outlook PST files, MS Outlook MSG files, Lotus Notes NSF files or MIME-encoded text or EML files. Any other electronic submission of e-mail must be approved in advance.
- (2) *Native production*. The CAC requests Electronically Stored Information (“ESI”) in its native file format whenever possible. If the electronic files are readable only through proprietary software, the files will need to be produced both in their native form and, in addition, in a format readable by off the shelf or open source software whenever possible. Provide any free “readers” that are associated with the proprietary software that would permit a third party to review the document in its native format, to the extent permitted by your software license. Electronic files must be copied in a way that preserves metadata.
- (3) *Audio/Video production*. Whenever possible, audio and video should be produced in files that are playable using readily available playback software. For audio, acceptable file types include WAV, MP3, and WMA. For video, acceptable file types include MPG, MP4, AVI and WMV. Media files requiring proprietary codecs and/or playable only with proprietary software should be converted to one of these file types before production.

- (4) *PDF files.* PDF files should be text-enabled and any security settings disabled that would prevent use of the images in litigation support software.
- (5) *Security and Usability.* All submissions of electronic data must be free of computer viruses. Any passwords protecting documents or files when opened in their native program should be removed. If encryption and passwords are necessary, add all documents on a disc volume to a single password-encrypted ZIP file. Transmission of material which has personal identifiers should comply with applicable federal law. The files must be received in a form in which they are readily usable.

Scanned Images

If the documents are scanned, the CAC requests they be provided in single page TIFF Group IV format with an IPRO load file showing the box, folder, document and attachment range boundaries. Text files created by an optical character recognition process (“OCR”) should be included with the TIFF images and should be reflected in the load file. In the absence of an image load file, scanned documents should be produced as either multi-page TIFF or PDF files. Individual multi-page TIFF or PDF files should be broken up based on logical document boundaries and should be named by beginning bates number.

When submitting documents that have been scanned, adhere to the following specifications:

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- (2) Images containing relevant color or grayscale information should be scanned in color or grayscale at 200 dpi resolution.
- (3) Files should be bates-numbered and named with a two or three letter prefix which readily identifies the source of the documents and should have a counter range consistent with the maximum volume of production.
- (4) Regardless of format, all images should be scanned so that logical document boundaries are reflected in either the image load file, the multi-page image breaks, or both.

Requests

1. Please produce complete copies of all policies, procedures, directives, standard operating procedures, or other documents that provide direction and guidance for the City that have been published, developed, produced, adopted, or implemented by the City as they relate to hiring, retention, screening, training, supervision, termination, discipline, or other employment topics for HPD.
2. Please produce copies of all video or audio recordings captured by devices owned, operated, installed, or monitored by the City (*e.g.*, webcams installed by the City) that recorded, documented, or relate to the Protests.
3. Please produce all policies, procedures, directives, standard operating procedures, or other documents addressing document retention, including storage, deletion, or retention of audio or video recordings.
4. Please produce all correspondence—including written or electronic letters, memoranda, electronic mail, text messages, instant messages, chats, or mobile data terminal communications—relating to, discussing, or arising out of the preparations for, oversight of, or responses to the Protests.
5. Please provide all materials—including written documents or records, audio recordings, video recordings, or internet submissions—documenting, relating to, addressing, or responding to any complaints the City received regarding conduct of HPD, its personnel, or other law enforcement relating to or arising out of the Protests.

Dated: 3 August 2020

/s/ Jackson R. Sharman III

Counsel for Huntsville Police Citizens Advisory Council

OF COUNSEL:

Jackson R. Sharman III

jsharman@lightfootlaw.com

Elizabeth H. Huntley

ehuntley@lightfootlaw.com

Robert J. "Jay" Sewell

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(205) 581-0700

(205) 581-0799 (Facsimile)

BEFORE THE HUNTSVILLE POLICE CITIZENS ADVISORY COUNCIL

To:)	
Jeff Rich)	
County Attorney)	<i>In re</i> Review Pursuant to
Madison County, Alabama)	Huntsville City Council
100 Northside Square)	Resolution No. 20-487
Huntsville, Alabama 35801)	

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2. “The County”: This will refer to the county government of Madison County, Alabama, including its departments, agencies, councils, boards, commissions, officials (elected, appointed, or otherwise), personnel or employees, agents, or other representatives.
3. “HPCAC” or “CAC”: This will refer to the Huntsville Police Citizens Advisory Council, including its constituent members and the council as a whole.
4. “Complaint”: This will refer to any notice or communication MCSO or the County has received from members of the public relating to or reporting incidents of alleged

misconduct by law enforcement officers or public agents. This encompasses oral (including by telephone) or written notices or communications, including via electronic media (*e.g.*, electronic mail or via online submission).

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- a. Equipment manufacturer;
- b. Equipment model name and number;
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11. Identify all employees or personnel within MCSO certified or authorized to provide training for the methods of force identified in response to Request No. 8 above.

12. Please produce complete copies of all policies, procedures, directives, standard operating procedures, or other documents that provide direction and guidance for MCSO that have been published, developed, produced, adopted, or implemented by MCSO.

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18. Please identify all law enforcement officers—whether from MCSO or other law enforcement agencies—that participated in the planning for, preparations for, response to, patrolling of, or any other activities relating to or arising out the Protests. Additionally, please produce any applicable duty rosters, shift rosters, unit lists, CAD reports, or other similar materials identifying personnel working in preparation for or in response to the Protests.

19. Please produce all reports, memoranda, briefings, notes, or other materials (written or electronic) that provided background information or intelligence received, created, or distributed by MCSO in preparations for or responses to the Protests. This includes any reports or materials from any federal, state, or local law enforcement agencies or support services, including Huntsville Police Department (“HPD”), North Alabama Multi-Agency Crime Center (“NAMACC”); Regional Organized Crime Information Center (“ROCIC”); Regional Information Sharing Systems (“RISS”); Alabama Fusion Center, Alabama Criminal Justice Information Center (“ACJIC”); Alabama Law Enforcement Agency (“ALEA”); Federal Bureau of Investigation; U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives; U.S. Department of Homeland Security; U.S. Department of Justice; U.S. Marshals Service; or U.S. Attorney’s Office(s). Please also provide relevant information and materials concerning informants (redacting any identifying information of any confidential sources), witnesses, community or civic groups, or any other sources (government or civilian).

Dated: 3 August 2020

/s/ Jackson R. Sharman III

Counsel for Huntsville Police Citizens Advisory Council

OF COUNSEL:

Jackson R. Sharman III

jsharman@lightfootlaw.com

Elizabeth H. Huntley

ehuntley@lightfootlaw.com

Robert J. “Jay” Sewell

jsewell@lightfootlaw.com

Amaobi J. Enyinnia

aenyinnia@lightfootlaw.com

LIGHTFOOT, FRANKLIN & WHITE, LLC

400 20TH STREET NORTH

BIRMINGHAM, ALABAMA 35203

(205) 581-0700

BEFORE THE HUNTSVILLE POLICE CITIZENS ADVISORY COUNCIL

To:)
Megan Zingarelli)
City Attorney) *In re* Review Pursuant to
City of Madison, Alabama) Huntsville City Council
100 Hughes Road) Resolution No. 20-487
Madison, Alabama 35758)

REQUESTS FOR DOCUMENTS, MATERIALS, AND INFORMATION

Pursuant to the authority granted by Huntsville City Council Resolution No. 20-487, the Huntsville Police Citizens Advisory Council requests you to produce the documents, materials, and information described below and according to the instructions and definitions provided. Please respond within thirty (30) days of service of these requests by producing the requested documents, materials, and information to counsel identified below.

Definitions

Throughout these requests, the following words and phrases will have the indicated meanings unless specified otherwise:

1. “You,” “your,” or “MPD”: This will refer to the Madison (Alabama) Police Department, including its officers (full-time, part-time, or reserve), administration, personnel or employees (both sworn and civilian), and other representatives.
2. “The City”: This will refer to the municipality of the City of Madison, Alabama, including its departments, agencies, councils, boards, commissions, officials (elected, appointed, or otherwise), personnel or employees, agents, or other representatives.
3. “HPCAC” or “CAC”: This will refer to the Huntsville Police Citizens Advisory Council, including its constituent members and the council as a whole.
4. “Complaint”: This will refer to any notice or communication MPD or the City has received from members of the public relating to or reporting incidents of alleged misconduct by

law enforcement officers or public agents. This encompasses oral (including by telephone) or written notices or communications, including via electronic media (*e.g.*, electronic mail or via online submission).

5. “The Protests”: This will refer to any protest, demonstration, riot, rally, march, parade, or other similar gathering concerning racial concerns, social justice, or law enforcement policies or practices that occurred within the city limits or police jurisdiction of Huntsville, Alabama, between (and including) May 30, 2020, and June 3, 2020.

6. “Document(s)”: This will refer to any writing of any kind, including originals and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including, but without limitation, correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, emails, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guaranties, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any sort of conversation, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, worksheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or oral records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which you have knowledge, or which are now or were formerly in your actual or constructive possession, custody, or control. It will also include text messages or instant messages sent or received via cellular, internet, or other wireless communication, whether sent or received on devices that are the property of MPD or of others.

Instructions

General Instructions

1. Items and documents to be produced include all items and documents in your possession, custody, or control, wherever located. Without limitation on the term “control,” an item or document is deemed to be in your control if you have the right to secure that item or document or copies thereof from another person.

2. All requests for documents include the original final version of the document (or a copy, if the original is not available) and all drafts, and also the original and all copies which are not identical, whether by reason of handwritten notes or otherwise.

3. All documents that respond, in whole or in part, to any part or clause of any paragraph of this request shall be produced in their original form and in their entirety, including all attachments and enclosures. All documents that are attached to documents called for by this request shall be produced, even if they are not otherwise responsive to this subpoena. Documents shall be produced in the order and in the file folders in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in that form.

4. Any document that is requested but withheld on a claim of privilege must be preserved. If you assert that the document contains privileged material, produce the entire document with the claimed privileged material deleted. For any document or any portion of any document withheld under a claim of privilege, submit a privilege log from your counsel or one of your employees in which you identify the document by author(s), addressee(s), date, number of pages, current location, and subject matter. Specify the nature and basis of the claimed privilege and the paragraph of this demand for documents to which the document is responsive, and

identify each person to whom the document or its contents, or any part thereof, has been disclosed.

Specifications for Electronic Production

The CAC requests that all documents be produced in an electronic format. Data can be provided on CD, DVD, or USB 2 external hard drive. With the understanding that advanced consultation with CAC counsel may be necessary before electronic information is produced, the following is provided for general guidance.

Electronic Data

Electronic data (i.e., native production of electronic files), should be provided in a form that is readily usable:

- (1) *E-mail*. The CAC will accept MS-Outlook PST files, MS Outlook MSG files, Lotus Notes NSF files or MIME-encoded text or EML files. Any other electronic submission of e-mail must be approved in advance.
- (2) *Native production*. The CAC requests Electronically Stored Information (“ESI”) in its native file format whenever possible. If the electronic files are readable only through proprietary software, the files will need to be produced both in their native form and, in addition, in a format readable by off the shelf or open source software whenever possible. Provide any free “readers” that are associated with the proprietary software that would permit a third party to review the document in its native format, to the extent permitted by your software license. Electronic files must be copied in a way that preserves metadata.
- (3) *Audio/Video production*. Whenever possible, audio and video should be produced in files that are playable using readily available playback software. For audio, acceptable file types include WAV, MP3, and WMA. For video, acceptable file types include MPG, MP4, AVI and WMV. Media files requiring proprietary codecs and/or playable only with proprietary software should be converted to one of these file types before production.
- (4) *PDF files*. PDF files should be text-enabled and any security settings disabled that would prevent use of the images in litigation support software.

- (5) *Security and Usability*. All submissions of electronic data must be free of computer viruses. Any passwords protecting documents or files when opened in their native program should be removed. If encryption and passwords are necessary, add all documents on a disc volume to a single password-encrypted ZIP file. Transmission of material which has personal identifiers should comply with applicable federal law. The files must be received in a form in which they are readily usable.

Scanned Images

If the documents are scanned, the CAC requests they be provided in single page TIFF Group IV format with an IPRO load file showing the box, folder, document and attachment range boundaries. Text files created by an optical character recognition process (“OCR”) should be included with the TIFF images and should be reflected in the load file. In the absence of an image load file, scanned documents should be produced as either multi-page TIFF or PDF files. Individual multi-page TIFF or PDF files should be broken up based on logical document boundaries and should be named by beginning bates number.

When submitting documents that have been scanned, adhere to the following specifications:

- (1) Most images should be scanned in black and white, at 300 dpi resolution. If necessary to avoid excessive “speckling” and to avoid interference with OCR, some documents can be provided at 200 dpi resolution.
- (2) Images containing relevant color or grayscale information should be scanned in color or grayscale at 200 dpi resolution.
- (3) Files should be bates-numbered and named with a two or three letter prefix which readily identifies the source of the documents and should have a counter range consistent with the maximum volume of production.
- (4) Regardless of format, all images should be scanned so that logical document boundaries are reflected in either the image load file, the multi-page image breaks, or both.

Requests

1. Please produce all incident/offense reports created by MPD relating to or arising out of the Protests.
2. Please produce all arrest reports for arrests made by MPD or other law enforcement officers relating to or arising out of the Protests.
3. Please produce all call logs, computer-aided dispatch (“CAD”) logs or reports, or other documents concerning complaints, calls for service, or officer-initiated activity relating to or arising out of the Protests.
4. Please produce all records, documents, notes, cards, or other materials (written or electronic) documenting contacts or field interviews with any individuals relating to or arising out of the Protests.
5. Please produce all audio recordings of telephone calls relating to or arising out of the Protests.
6. Please produce all audio recordings of all radio traffic (including dispatch, in-car, handheld/walkie-talkie, direct-connect, push-to-talk, or other audio communications) relating to or arising out of the Protests.
7. Please produce all video recordings (including in-vehicle cameras or body-worn cameras) relating to our arising out of the Protests.
8. Please produce all reports, documents, or other materials (written or electronic) documenting any officer’s use of force—including soft-empty-hand control, hard-empty-hand control, grappling or ground fighting, impact or intermediate weapons (*e.g.*, batons), chemical agents (*e.g.*, OC spray, CS, CN, teargas), conducted energy weapons (*e.g.*, Tasers), less-than-lethal projectiles (*e.g.*, rubber bullets, beanbags), distraction devices (*e.g.*, flashbangs, smoke

grenades), or firearms—relating to or arising out of the Protests. This request includes any data downloads or other computerized or digital records documenting the use and functioning of a conducted energy weapon. Additionally, this request includes identifying the specific equipment used, including providing:

- a. Equipment manufacturer;
- b. Equipment model name and number;
- c. Caliber (if applicable);
- d. Serial number (if applicable); and
- e. The name of the officer using the equipment.

9. For each instance of force documented in Request No. 8 above, please provide all records documenting or certifying the training the respective officer received relating to that use of force, including initial certifications or trainings and any subsequent, supplemental, or recertification training received. The request includes providing all relevant training certificates.

10. Please produce all training or instruction materials—including written or electronic manuals, books, videos, webinars, slideshows, or other materials—relating to the any methods of force identified in response to Request No. 8 above.

11. Identify all employees or personnel within MPD certified or authorized to provide training for the methods of force identified in response to Request No. 8 above.

12. Please produce complete copies of all policies, procedures, directives, standard operating procedures, or other documents that provide direction and guidance for MPD that have been published, developed, produced, adopted, or implemented by MPD.

13. Please produce all policies, procedures, directives, standard operating procedures, or other documents addressing document retention, including storage, deletion, or retention of audio or video recordings.

14. Please produce all records, logs, documents, or other materials (whether written or electronic) documenting the collection, receipt, transfer, chain of custody, storage, destruction, or any other disposition of any physical evidence collected during or relating to the Protests.

15. Please produce all written statements or memoranda describing any interviews or interrogations of any suspect, offender, witness, or other individual involved with or knowledgeable of any incident relating to or arising out of the Protests.

16. Please produce all correspondence—including written or electronic letters, memoranda, electronic mail, text messages, instant messages, chats, or mobile data terminal communications—relating to, discussing, or arising out of the preparations for, oversight of, or responses to the Protests.

17. Please provide all materials—including written documents or records, audio recordings, video recordings, or internet submissions—documenting, relating to, addressing, or responding to any complaints MPD received regarding conduct of law enforcement relating to or arising out of the Protests.

18. Please identify all law enforcement officers—whether from MPD or other law enforcement agencies—that participated in the planning for, preparations for, response to, patrolling of, or any other activities relating to or arising out the Protests. Additionally, please produce any applicable duty rosters, shift rosters, unit lists, CAD reports, or other similar materials identifying personnel working in preparation for or in response to the Protests.

19. Please produce all reports, memoranda, briefings, notes, or other materials (written or electronic) that provided background information or intelligence received, created, or distributed by MPD in preparations for or responses to the Protests. This includes any reports or materials from any federal, state, or local law enforcement agencies or support services, including Huntsville Police Department (“HPD”), North Alabama Multi-Agency Crime Center (“NAMACC”); Regional Organized Crime Information Center (“ROCIC”); Regional Information Sharing Systems (“RISS”); Alabama Fusion Center, Alabama Criminal Justice Information Center (“ACJIC”); Alabama Law Enforcement Agency (“ALEA”); Federal Bureau of Investigation; U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives; U.S. Department of Homeland Security; U.S. Department of Justice; U.S. Marshals Service; or U.S. Attorney’s Office(s). Please also provide relevant information and materials concerning informants (redacting any identifying information of any confidential sources), witnesses, community or civic groups, or any other sources (government or civilian).

Dated: 3 August 2020

/s/ Jackson R. Sharman III

Counsel for Huntsville Police Citizens Advisory Council

OF COUNSEL:

Jackson R. Sharman III

jsharman@lightfootlaw.com

Elizabeth H. Huntley

ehuntley@lightfootlaw.com

Robert J. “Jay” Sewell

jsewell@lightfootlaw.com

Amaobi J. Enyinnia

aenyinnia@lightfootlaw.com

LIGHTFOOT FRANKLIN & WHITE

400 20TH Street North

Birmingham, AL 35203

(205) 581-0700

BEFORE THE HUNTSVILLE POLICE CITIZENS ADVISORY COUNCIL

To:)
Noel Barnes)
General Counsel) *In re* Review Pursuant to
Alabama Law Enforcement Agency) Huntsville City Council
201 South Union Street, Suite 300) Resolution No. 20-487
Montgomery, Alabama 36104-2889)

REQUESTS FOR DOCUMENTS, MATERIALS, AND INFORMATION

Pursuant to the authority granted by Huntsville City Council Resolution No. 20-487, the Huntsville Police Citizens Advisory Council requests you to produce the documents, materials, and information described below and according to the instructions and definitions provided. Please respond within thirty (30) days of service of these requests by producing the requested documents, materials, and information to counsel identified below.

Definitions

Throughout these requests, the following words and phrases will have the indicated meanings unless specified otherwise:

1. “You,” “your,” or “ALEA”: This will refer to the Alabama Law Enforcement Agency, including its officers, troopers, or investigators (full-time, part-time, or reserve) and its administration, personnel or employees (both sworn and civilian), and other representatives.
2. “HPCAC” or “CAC”: This will refer to the Huntsville Police Citizens Advisory Council, including its constituent members and the council as a whole.
3. “Complaint”: This will refer to any notice or communication ALEA has received from members of the public relating to or reporting incidents of alleged misconduct by law enforcement officers or public agents. This encompasses oral (including by telephone) or written notices or communications, including via electronic media (*e.g.*, electronic mail or via online submission).

4. “The Protests”: This will refer to any protest, demonstration, riot, rally, march, parade, or other similar gathering concerning racial concerns, social justice, or law enforcement policies or practices that occurred within the city limits or police jurisdiction of Huntsville, Alabama, between (and including) May 30, 2020, and June 3, 2020.

5. “Document(s)”: This will refer to any writing of any kind, including originals and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including, but without limitation, correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, emails, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guaranties, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any sort of conversation, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, worksheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or oral records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which you have knowledge, or which are now or were formerly in your actual or constructive possession, custody, or control. It will also include text messages or instant messages sent or received via cellular, internet, or other wireless communication, whether sent or received on devices that are the property of ALEA or of others.

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item or document is deemed to be in your control if you have the right to secure that item or document or copies thereof from another person.

2. All requests for documents include the original final version of the document (or a copy, if the original is not available) and all drafts, and also the original and all copies which are not identical, whether by reason of handwritten notes or otherwise.

3. All documents that respond, in whole or in part, to any part or clause of any paragraph of this request shall be produced in their original form and in their entirety, including all attachments and enclosures. All documents that are attached to documents called for by this request shall be produced, even if they are not otherwise responsive to this subpoena. Documents shall be produced in the order and in the file folders in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in that form.

4. Any document that is requested but withheld on a claim of privilege must be preserved. If you assert that the document contains privileged material, produce the entire document with the claimed privileged material deleted. For any document or any portion of any document withheld under a claim of privilege, submit a privilege log from your counsel or one of your employees in which you identify the document by author(s), addressee(s), date, number of pages, current location, and subject matter. Specify the nature and basis of the claimed privilege and the paragraph of this demand for documents to which the document is responsive and identify each person to whom the document or its contents, or any part thereof, has been disclosed.

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Requests

1. Please produce all incident/offense reports created by ALEA relating to or arising out of the Protests.
2. Please produce all arrest reports for arrests made by ALEA or other law enforcement officers relating to or arising out of the Protests.

3. Please produce all call logs, computer-aided dispatch (“CAD”) logs or reports, or other documents concerning complaints, calls for service, or officer-initiated activity relating to or arising out of the Protests.

4. Please produce all records, documents, notes, cards, or other materials (written or electronic) documenting contacts or field interviews with any individuals relating to or arising out of the Protests.

5. Please produce all audio recordings of telephone calls relating to or arising out of the Protests.

6. Please produce all audio recordings of all radio traffic (including dispatch, in-car, handheld/walkie-talkie, direct-connect, push-to-talk, or other audio communications) relating to or arising out of the Protests.

7. Please produce all video recordings (including in-vehicle cameras or body-worn cameras) relating to our arising out of the Protests.

8. Please produce all reports, documents, or other materials (written or electronic) documenting any officer’s use of force—including soft-empty-hand control, hard-empty-hand control, grappling or ground fighting, impact or intermediate weapons (*e.g.*, batons), chemical agents (*e.g.*, OC spray, CS, CN, teargas), conducted energy weapons (*e.g.*, Tasers), less-than-lethal projectiles (*e.g.*, rubber bullets, beanbags), distraction devices (*e.g.*, flashbangs, smoke grenades), or firearms—relating to or arising out of the Protests. This request includes any data downloads or other computerized or digital records documenting the use and functioning of a conducted energy weapon. Additionally, this request includes identifying the specific equipment used, including providing:

- a. Equipment manufacturer;

- b. Equipment model name and number;
- c. Caliber (if applicable);
- d. Serial number (if applicable); and
- e. The name of the officer using the equipment.

9. For each instance of force documented in Request No. 8 above, please provide all records documenting or certifying the training the respective officer received relating to that use of force, including initial certifications or trainings and any subsequent, supplemental, or recertification training received. The request includes providing all relevant training certificates.

10. Please produce all training or instruction materials—including written or electronic manuals, books, videos, webinars, slideshows, or other materials—relating to the any methods of force identified in response to Request No. 8 above.

11. Identify all employees or personnel within ALEA certified or authorized to provide training for the methods of force identified in response to Request No. 8 above.

12. Please produce complete copies of all policies, procedures, directives, standard operating procedures, or other documents that provide direction and guidance for ALEA that have been published, developed, produced, adopted, or implemented by ALEA.

13. Please produce all policies, procedures, directives, standard operating procedures, or other documents addressing document retention, including storage, deletion, or retention of audio or video recordings.

14. Please produce all records, logs, documents, or other materials (whether written or electronic) documenting the collection, receipt, transfer, chain of custody, storage, destruction, or any other disposition of any physical evidence collected during or relating to the Protests.

15. Please produce all written statements or memoranda describing any interviews or interrogations of any suspect, offender, witness, or other individual involved with or knowledgeable of any incident relating to or arising out of the Protests.

16. Please produce all correspondence—including written or electronic letters, memoranda, electronic mail, text messages, instant messages, chats, or mobile data terminal communications—relating to, discussing, or arising out of the preparations for, oversight of, or responses to the Protests.

17. Please provide all materials—including written documents or records, audio recordings, video recordings, or internet submissions—documenting, relating to, addressing, or responding to any complaints ALEA received regarding conduct of law enforcement relating to or arising out of the Protests.

18. Please identify all law enforcement officers—whether from ALEA or other law enforcement agencies—that participated in the planning for, preparations for, response to, patrolling of, or any other activities relating to or arising out the Protests. Additionally, please produce any applicable duty rosters, shift rosters, unit lists, CAD reports, or other similar materials identifying personnel working in preparation for or in response to the Protests.

19. Please produce all reports, memoranda, briefings, notes, or other materials (written or electronic) that provided background information or intelligence received, created, or distributed by ALEA in preparations for or responses to the Protests. This includes any reports or materials from any federal, state, or local law enforcement agencies or support services, including Huntsville Police Department (“HPD”), North Alabama Multi-Agency Crime Center (“NAMACC”); Regional Organized Crime Information Center (“ROCIC”); Regional Information Sharing Systems (“RISS”); Alabama Fusion Center, Alabama Criminal Justice

Information Center (“ACJIC”); Federal Bureau of Investigation; U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives; U.S. Department of Homeland Security; U.S. Department of Justice; U.S. Marshals Service; or U.S. Attorney’s Office(s). Please also provide relevant information and materials concerning informants (redacting any identifying information of any confidential sources), witnesses, community or civic groups, or any other sources (government or civilian).

Dated: 3 August 2020

/s/ Jackson R. Sharman III

Counsel for Huntsville Police Citizens Advisory Council

OF COUNSEL:

Jackson R. Sharman III
jsharman@lightfootlaw.com
Elizabeth H. Huntley
ehuntley@lightfootlaw.com
Robert J. “Jay” Sewell
jsewell@lightfootlaw.com
Amaobi J. Enyinnia
ayennia@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203
(205) 581-0700
(205) 581-0799 (Facsimile)

EXHIBIT

C

BEFORE THE HUNTSVILLE CITIZENS POLICE ADVISORY COUNCIL

To:)
Chief Mark McMurray) *In re* Review Pursuant to
Huntsville Police Department) Huntsville City Council
815 Wheeler Avenue NW) Resolution No. 20-487
Huntsville, Alabama 35801)

SECOND REQUEST FOR DOCUMENTS, MATERIALS, AND INFORMATION

Pursuant to the authority granted by Huntsville City Council Resolution No. 20-487, the Huntsville Police Citizens Advisory Council requests you to produce the documents, materials, and information described below and according to the instructions and definitions provided. Please respond within thirty (30) days of service of these requests by producing the requested documents, materials, and information to counsel identified below.

Definitions

Throughout these requests, the following words and phrases will have the indicated meanings unless specified otherwise:

1. “You,” “your,” or “HPD”: This will refer to the Huntsville (Alabama) Police Department, including its officers (full-time, part-time, or reserve), administration, personnel or employees (both sworn and civilian), and other representatives.
2. “The City”: This will refer to the municipality of the City of Huntsville, Alabama, including its departments, agencies, councils, boards, commissions, officials (elected, appointed, or otherwise), personnel or employees, agents, or other representatives.
3. “HPCAC” or “CAC”: This will refer to the Huntsville Police Citizens Advisory Council, including its constituent members and the council as a whole.
4. “Complaint”: This will refer to any notice or communication HPD or the City has received from members of the public relating to or reporting incidents of alleged misconduct by

HPD, the City, or other law enforcement or public agents. This encompasses oral (including by telephone) or written notices or communications, including via electronic media (*e.g.*, electronic mail or via online submission).

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Instructions

General Instructions

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3. All documents that respond, in whole or in part, to any part or clause of any paragraph of this request shall be produced in their original form and in their entirety, including all attachments and enclosures. All documents that are attached to documents called for by this request shall be produced, even if they are not otherwise responsive to this subpoena. Documents shall be produced in the order and in the file folders in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in that form.

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- (5) *Security and Usability*. All submissions of electronic data must be free of computer viruses. Any passwords protecting documents or files when opened in their native program should be removed. If encryption and passwords are necessary, add all documents on a disc volume to a single password-encrypted ZIP file. Transmission of material which has personal identifiers should comply with applicable federal law. The files must be received in a form in which they are readily usable.

Scanned Images

If the documents are scanned, the CAC requests they be provided in single page TIFF Group IV format with an IPRO load file showing the box, folder, document and attachment range boundaries. Text files created by an optical character recognition process (“OCR”) should be included with the TIFF images and should be reflected in the load file. In the absence of an image load file, scanned documents should be produced as either multi-page TIFF or PDF files. Individual multi-page TIFF or PDF files should be broken up based on logical document boundaries and should be named by beginning bates number.

When submitting documents that have been scanned, adhere to the following specifications:

- (1) Most images should be scanned in black and white, at 300 dpi resolution. If necessary to avoid excessive “speckling” and to avoid interference with OCR, some documents can be provided at 200 dpi resolution.
- (2) Images containing relevant color or grayscale information should be scanned in color or grayscale at 200 dpi resolution.
- (3) Files should be bates-numbered and named with a two or three letter prefix which readily identifies the source of the documents and should have a counter range consistent with the maximum volume of production.
- (4) Regardless of format, all images should be scanned so that logical document boundaries are reflected in either the image load file, the multi-page image breaks, or both.

Requests

1. Please produce a list of all less-lethal munitions or projectiles (*e.g.*, beanbag rounds, rubber balls or pellets) in HPD's possession, custody, or control as of June 1 and June 3, 2020. In your response, please identify the equipment's:

- a. Manufacturer;
- b. Model name or number; and
- c. Caliber (if applicable).

2. Please produce a list of all chemical agents, devices, or equipment (*e.g.*, OC, CS, smoke) in HPD's possession, custody, or control as of June 1 and June 3, 2020. In your response, please identify the equipment's:

- a. Manufacturer;
- b. Model name or number;
- c. Caliber (if applicable); and
- d. Method of deployment.

Dated: 22 January 2021

/s/ Jackson R. Sharman III
Counsel for Huntsville Citizens Police Advisory Council

OF COUNSEL:
Jackson R. Sharman III
jsharman@lightfootlaw.com
Elizabeth H. Huntley
ehuntley@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203
(205) 581-0700
(205) 581-0799 (Facsimile)



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

22 January 2021

Via U.S. mail

Chief Deputy Stacy Bates
Accounting-Finance/Special Operations
Madison County Sheriff's Office
100 Northside Square, Room 206
Huntsville, Alabama 35801

Dear Chief Bates:

Our firm acts as Independent Counsel to the Huntsville Police Citizens Advisory Council ("HPCAC"), which is conducting an independent review into the protest events in Huntsville, Alabama, on June 1 and June 3, 2020. Pursuant to Code of Alabama section 36-12-40, and on behalf of HPCAC, we request certain public records of the Madison County Sheriff's Office ("MCSO"). Specifically, we request the following records:

1. Records identifying the quantity and type of less-lethal munitions, projectiles, and devices (*e.g.*, beanbag rounds, rubber balls or pellets) purchased by MCSO for the last five years. This request includes invoices, purchase orders, receipts, inventories, and other similar documents.
2. Records or reports relating to the deployment or use of less-lethal munitions, projectiles, or devices by personnel with MCSO on June 1 and June 3, 2020. This includes any reports, inventories, manifests, or other similar documents.
3. Records identifying the quantity and type of chemical agents (*e.g.*, CS, OC, smoke) purchased by MCSO for the last five years. This request includes invoices, purchase orders, receipts, inventories, and other similar documents.
4. Records or reports relating to the deployment or use of chemical agents by personnel with MCSO on June 1 and June 3, 2020. This includes any reports, inventories, manifests, or other similar documents.
5. Records or reports identifying personnel of MCSO that were on duty from 12:00 p.m. CDT to 11:59 p.m. CDT on June 1 and June 3, 2020. This includes duty or shift rosters, computer-aided dispatch ("CAD") reports, and other similar documents.

Chief Deputy Stacy Bates

22 January 2021

Page 2

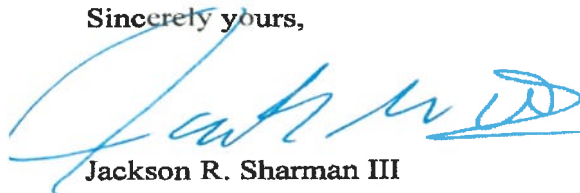
6. Reports of activities by MCSO personnel in relation to the rallies, demonstrations, riots, unrest, or protests occurring in Huntsville, Alabama, on June 1 and June 3, 2020. This includes CAD reports, incident/offense reports, arrest reports, and other similar documents.

If I need to direct this request to a different member of MCSO or to a different organization within Madison County government, please let me know.

I understand that there may be administrative costs for the collection, copying, and production of these materials, and we are willing to pay for reasonable costs. However, please provide advance notice if those costs will exceed \$200.00. To the extent it will reduce costs or promote ease of production, we are willing to accept production electronically (e.g., ShareFile, disk, or flash drive).

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

cc: Jeff Rich (jrich@madisoncountyal.gov)
Elizabeth H. Huntley (ehuntley@lightfootlaw.com)

EXHIBIT

D



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

21 August 2020

Via electronic mail

Chief Mark McMurray
Huntsville Police Department
815 Wheeler Avenue NW
Huntsville, Alabama 35801
mark.mcmurray@huntsvilleal.gov

Re: Requests for Production

Dear Chief McMurray:

As you know, we are outside independent counsel to the Huntsville Police Citizens Advisory Council (the "CAC"). The CAC has been charged by the Huntsville City Council with the reviewing law-enforcement responses to certain recent protests. This letter follows up on my letter of 3 August 2020 transmitting requests for production of documents.

By our calculation, responses to those requests for production are due by 2 September 2020, and we look forward to receipt of your materials.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jackson R. Sharman III", written over a light blue horizontal line.

Jackson R. Sharman III

cc (*via electronic mail*):

Lt. Jonathan Ware
Vicki Guerrieri
Elizabeth H. Huntley
Brandon K. Essig
Robert J. "Jay" Sewell
Amaobi J. Enyinnia



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

21 August 2020

Via electronic mail

Trey Riley
City Attorney for the City of Huntsville, Alabama
P.O. Box 308
Huntsville, Alabama 35804
trey.riley@huntsvilleal.gov

Re: Requests for Production

Dear Mr. Riley:

As you know, we are outside independent counsel to the Huntsville Police Citizens Advisory Council (the "CAC"). The CAC has been charged by the Huntsville City Council with the reviewing law-enforcement responses to certain recent protests. This letter follows up on my letter of 3 August 2020 transmitting requests for production of documents.

By our calculation, responses to those requests for production are due by 2 September 2020, and we look forward to receipt of your materials.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Sharman III", written over a light blue circular watermark or background.

Jackson R. Sharman III

cc (via electronic mail):

Vicki Guerrieri
Elizabeth H. Huntley
Brandon K. Essig
Robert J. "Jay" Sewell
Amaobi J. Enyinnia



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

21 August 2020

Via electronic mail

Jeff Rich
County Attorney for Madison County, Alabama
100 Northside Square
Huntsville, Alabama 35801
jrich@madisoncountyal.gov

Re: Requests for Production

Dear Mr. Rich:

As you know, we are outside independent counsel to the Huntsville Police Citizens Advisory Council (the "CAC"). The CAC has been charged by the Huntsville City Council with the reviewing law-enforcement responses to certain recent protests. This letter follows up on my letter of 3 August 2020 transmitting requests for production of documents.

By our calculation, responses to those requests for production are due by 2 September 2020, and we look forward to receipt of your materials.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jackson R. Sharman III", written over a horizontal line.

Jackson R. Sharman III

cc (*via electronic mail*):

Vicki Guerrieri
Elizabeth H. Huntley
Brandon K. Essig
Robert J. "Jay" Sewell
Amaobi J. Enyinnia



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

21 August 2020

Via electronic mail

Megan Zingarelli
City Attorney for Madison, Alabama
100 Hughes Road
Madison, Alabama 35758
megan.zingarelli@madisonal.gov

Re: Requests for Production

Dear Ms. Zingarelli:

As you know, we are outside independent counsel to the Huntsville Police Citizens Advisory Council (the "CAC"). The CAC has been charged by the Huntsville City Council with the reviewing law-enforcement responses to certain recent protests. This letter follows up on my letter of 3 August 2020 transmitting requests for production of documents.

By our calculation, responses to those requests for production are due by 2 September 2020, and we look forward to receipt of your materials.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Sharman III", written over a light blue circular watermark.

Jackson R. Sharman III

cc (via electronic mail):

Vicki Guerrieri
Elizabeth H. Huntley
Brandon K. Essig
Robert J. "Jay" Sewell
Amaobi J. Enyinnia



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

21 August 2020

Via electronic mail

Noel Barnes
General Counsel
Alabama Law Enforcement Agency
201 South Union Street, Suite 300
Montgomery, Alabama 36104-2889
noel.barnes@alea.gov

Re: Requests for Production

Dear Mr. Barnes:

As you know, we are outside independent counsel to the Huntsville Police Citizens Advisory Council (the "CAC"). The CAC has been charged by the Huntsville City Council with the reviewing law-enforcement responses to certain recent protests. This letter follows up on my letter of 3 August 2020 transmitting requests for production of documents.

By our calculation, responses to those requests for production are due by 2 September 2020, and we look forward to receipt of your materials.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Sharman III".

Jackson R. Sharman III

cc (*via electronic mail*):

Vicki Guerrieri
Elizabeth H. Huntley
Brandon K. Essig
Robert J. "Jay" Sewell
Amaobi J. Enyinnia



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

25 August 2020

Via electronic mail

Trey Riley
City Attorney for the City of Huntsville, Alabama
P.O. Box 308
Huntsville, Alabama 35804
trey.riley@huntsvilleal.gov

Re: Requests for Production – follow up

Dear Mr. Riley:

Thank you very much for your time on the telephone yesterday, and the time of your colleague Jeanne Rizzardi, with me and my colleague Jay Sewell. It was very helpful, and I would like to follow up about a few items.

City and HPD

Based on our conversation, I understand that you and Ms. Rizzardi are handling both the City of Huntsville's (the "City") and the Huntsville Police Department's (the "HPD") responses to the requests for production of documents previously served by our client, the Huntsville Citizens Police Advisory Council (the "CAC") on 3 August 2020. (In other words, we do not need to deal directly with the HPD about its production). If that understanding is incorrect, or if the situation changes, please let us know.

Separate Requests

As we discussed, there are two separate document requests – one to the City and one to the HPD. Although there is meaningful overlap between the two sets, the one directed to the HPD is more comprehensive. I assume that if there are any differences in responses or objections as between the two entities, those differences will be made clear in the responses. Also, if possible, it may help all of us down the road if the productions can be identified separately (for example, perhaps with different beginning "Bates labels" of "COH" and "HPD").

Reduction of Burden

To the extent consistent with discharge of the CAC's duties pursuant to the City Council's resolution, we are committed to making the responses to these document requests as

Trey Riley
25 August 2020
Page 2

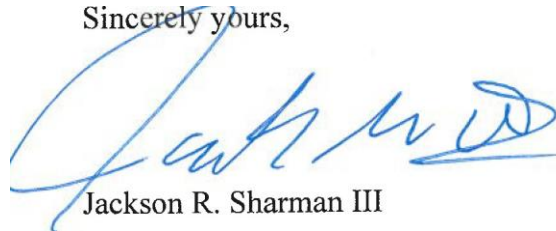
least burdensome as possible both for the City and for the HPD. As Jay and I mentioned on the call, if it would be helpful to have our technical support personnel speak directly with technical people at the City or the HPD with whom you are working, we are happy to set that up. In addition, we will accept a “rolling” production and certainly do not expect production to be complete within the 30-day period.

Audio, Video, and Texts

With regard to responsive audio, video, and text-message items, *see, e.g.*, Requests 5, 6, 7, and 16, we realize that there may be burdens imposed both by technology and volume. Again, we stand ready to assist if possible. (For example, we can send you hard drives). As I mentioned, we are certainly open to proposals regarding collection and management of such materials. As I hope you can appreciate, however, those types of items are very important in a review of the thorough kind that the City Council has demanded.

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

cc (via electronic mail):

Vicki Guerrieri
Elizabeth H. Huntley
Brandon K. Essig
Robert J. “Jay” Sewell
Amaobi J. Enyinnia

EXHIBIT

E

From: Jack Sharman <jsharman@lightfootlaw.com>

Date: Friday, September 4, 2020 at 4:51 PM

To: "Riley, Marion" <marion.riley@huntsvilleal.gov>

Cc: "Rizzardi, Jeanne D." <jeanne.rizzardi@huntsvilleal.gov>, Vicki Guerrieri <victoriaguerrieri@gmail.com>, "Elizabeth L. Huntley" <ehuntley@lightfootlaw.com>, Brandon Essig <bessig@lightfootlaw.com>, "Robert J. Sewell" <jsewell@lightfootlaw.com>, "Amaobi J. Enyinnia" <aenyinnia@lightfootlaw.com>

Subject: CAC: HPD -- requests for production to the City of Huntsville and the Huntsville Police Department | follow up

[By electronic mail](#)

Trey Riley
City Attorney for the City of Huntsville, Alabama
P.O. Box 308
Huntsville, Alabama 35804
trey.riley@huntsvilleal.gov

[Re: Requests for Production – follow up](#)

Dear Trey:

This note follows up on our earlier discussions and my letter of 25 August 2020 (attached) about responses from the City of Huntsville and from the Huntsville Police Department ("HPD") to document requests served by the Huntsville Police Citizens Advisory Council (the "CAC") on both entities on 3 August 2020.

It does not appear that we have received any responses

from either entity. (If I am in error, please let me know so that we can search properly). As we discussed on the phone and as I noted in my letter of 25 August, the CAC is certainly willing to work with the City and the HPD on these discovery responses. We are happy to talk about any means of making the production more efficient, less burdensome, and most useful to the CAC's discharge of its duties as set out by resolution of the Huntsville City Council. In addition, I am happy to make our technical investigation-support personnel available to speak with technical support for the CITY or the HPD. Finally, as I noted earlier, the CAC understands that the production must be a "rolling" one, rather than a wholesale one-time transfer. Nevertheless, we must get that process started.

Please let me know when we may expect to receive responsive materials from the City and from HPD.

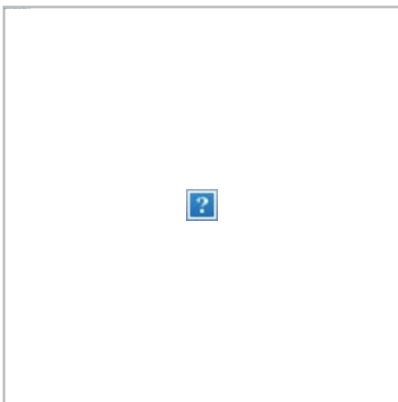
With best wishes for a good Labor Day weekend, I am

Sincerely yours,



Jackson R. Sharman, III

Attorney



205-581-0700 main
[205-581-0789](tel:205-581-0789) direct
jsharman@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



[Confidentiality Notice](#)



lightfootlaw.com

EXHIBIT

F

Memorandum of Understanding

Between

The City of Huntsville, Alabama

and

The Huntsville Police Citizens Advisory Council

This Memorandum of Understanding (“MOU”) sets forth the terms and understandings between the City of Huntsville, Alabama (the “City”) and the Huntsville Police Citizens Advisory Council (the “CAC”) with regard to certain documents and other materials to be shared by the City and its departments, including but not limited to the Huntsville Police Department (the “HPD”), with the CAC and the CAC’s Independent Counsel.

Background

Created by Huntsville municipal ordinance in 2010, the CAC was charged by the Huntsville City Council, via Resolution 20-487 (25 June 2020, as amended), with conducting a review of “the protests and demonstrations which began on or about May 30, 2020, especially those which occurred on June 1 and 3, 2020, as to the interactions between the protestors and demonstrators and the Huntsville Police Department.”

The Huntsville City Council also provided that, “[i]n conducting their review, HPCAC will have access to any resources at the Huntsville Police Department, including access to employees involved in the events to be investigated and documentary evidence, such as video footage from aerial surveillance and body cameras, provided employees shall retain any constitutional or procedural protections to which they are entitled under the constitution and/or statutes of the United States and/or the State of Alabama or the Employee Policies and Procedures of the City of Huntsville.”

Finally, the City Council instructed that the CAC’s review be “vigorous” and “independent.”

Purpose

In order to comply with the Resolution, the City and HPD have produced or will produce documents or other materials (the “Materials”) responsive to the CAC’s requests as the CAC discharges its mission as set out by the Huntsville City Council. In order to maximize the statutory and other protections provided to City employees, including privacy protections, as well as to retain and not waive whatever other privileges and rights are or may be available to the

City or City employees, the City retains and expressly does not relinquish custody and ownership of the Materials. The City and HPD retain the right to object to production of any materials requested by the CAC or Independent Counsel.

Conclusion and Return-or-Destroy

No later than thirty (30) calendar days after the submission of the CAC's report to the Huntsville City Council or the hearing thereon as contemplated by the Resolution, whichever is later, the CAC will either return all of the Materials to the City or will certify that all of the Materials in its possession and the possession of its Independent Counsel have been destroyed or deleted. The City has to right to assert a preference for whether it wishes the Materials either returned or destroyed.

Nothing in this MOU in general or this return-or-destroy provision in particular shall limit the CAC's or its Independent Counsel's use of the Materials in accordance with the CAC's authority under the Resolution, including use in the report required by the Resolution.

Limited Purpose and Scope

This MOU is limited to the purpose and scope as described above. It only concerns the Materials. It in no way limits nor can it be used to limit or expand the powers, duties, authorities, privileges or missions of either the City or the CAC. In the event of a conflict or inconsistency between this MOU and the Resolution, the Resolution controls.

This MOU cannot be used and shall not be used as the basis for an objection to the CAC's document requests or other discovery efforts, or as a reason to withhold documents, as the CAC and its Independent Counsel conduct the work required by the Resolution. Independent Counsel shall take reasonable steps to protect the Materials and to restrict their availability to members of the CAC; Independent Counsel and their staff; and others reasonably necessary to conduct the work required by the Resolution.

Effect and Modification

This MOU shall become effective upon the last-dated signature by authorized representatives of the City and the CAC. This MOU may be modified by mutual written consent of authorized representatives of the City and the CAC.

For the City of Huntsville:



Trey Kiley
City Attorney

22 September 2020

For the HPCAC:



Jack Sharman
Independent Counsel

23 September 2020

EXHIBIT

G



MADISON COUNTY, ALABAMA

JEFF RICH
County Attorney

February 4, 2021

VIA ELECTRONIC MAIL – jsharman@lightfootlaw.com

Jackson R. Sharman III
Lightfoot, Franklin & White LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203

Re: Open Records Request; File #2020-250

Dear Mr. Sharman:

As you appear to be aware, I represent Madison County Sheriff Kevin Turner. Sheriff Turner has requested that I respond to your correspondence to “Chief Deputy Stacy Bates” dated January 22, 2021.

Setting aside issues related to appropriateness of the parties which appear to be the subject of your correspondence, the “records” requested fall within recognized exceptions to public disclosure. Under Code of Alabama, § 36-12-40 (1975), the disclosure of “records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure . . . the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare,” are exempt from public disclosure. Section 36-12-40 also exempts from public disclosure records which “would otherwise be detrimental to the best interests of the public.” (*Id.*)

Based on these provisions, records requested in your correspondence, to the extent such exist, are not subject to disclosure to the public. Please direct any questions or further communication regarding this matter to my attention.

Sincerely,

Jeff Rich
County Attorney
JJR/vz

c: Honorable Kevin Turner
Chief Deputy Stacy Bates

EXHIBIT

H



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

24 February 2021

Via electronic mail

Jeff Rich
County Attorney
Madison County, Alabama
100 Northside Square, Suite 700
Huntsville, Alabama 35801
jrich@madisoncountyal.gov

Re: Open Records Request to Madison County Sheriff's Office

Dear Mr. Rich:

This letter replies to your 4 February 2021 letter responding to the open records request submitted by the Huntsville Police Citizens Advisory Council (the "CAC") to the Madison County Sheriff's Office ("the MCSO") on 22 January 2021. The CAC is disappointed in the MCSO's response, disagrees with its assessment, and asks that it reconsider.

Alabama Citizens Have a Right to Public Records

As the open records statute makes clear, "[e]very citizen has a right to inspect and take a copy of any public writing of this state . . ." Ala. Code § 36-12-40 (emphasis added). All of the CAC members are citizens of Alabama. (For that matter, so are I and my fellow Independent Counsel, Liz Huntley). The CAC has statutory standing under the open records statute. That standing to inspect and copy the public documents we have requested has nothing to do with the CAC's authority under municipal regulations or Huntsville City Council resolutions.

There Are No Applicable Exemptions

The cited exceptions to the open records statute do not apply to our request. The MCSO claims the exemption for "records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure . . . the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare." *See id.* The Alabama Supreme Court has spoken clearly on this matter: "This exception . . . clearly refers to records regarding *public infrastructure* and limits public disclosure of *sensitive information* affecting *public safety* and *national security*." *Allen v. Barksdale*, 32 So. 3d 1264, 1273 (Ala. 2009) (emphasis added) (holding this exception did not apply to prison incident and investigation reports). The CAC's request does not touch on the strategic infrastructure and security issues that the exception may cover.

Production of the Records Would Benefit the Public Interest

The requested records would not “be detrimental to the best interests of the public.” As a comparator, the State of Alabama publishes on a public website, *open.alabama.gov*, its expenditures for law enforcement, including ammunition for the Alabama Department of Corrections. (I attach a copy of a record obtained from this website). Similarly, as mentioned previously, the Alabama Supreme Court has ruled prison incident reports generally are subject to production under the Open Records Act. *See id.* Additionally, a public entity’s financial records, including salary information (with certain fields omitted), are subject to public inspection. *See Blankenship v. City of Hoover*, 590 So. 2d 245, 250 (Ala. 1991) (affirming trial court’s ruling permitting inspection of salary information subject to some limitations). Our open records request seeks information about how the MCSO spends public dollars; how it documents incidents of force used in the course of public law enforcement activities; and how it staffed its response to two public events. Providing this information hardly seems harmful to the public’s interest and indeed would be to the public’s benefit.

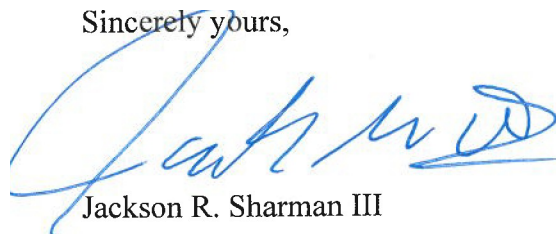
The Statute Favors Production and the MCSO Bears the Burden of Proving Otherwise

The open records statute favors production, and courts construe exceptions narrowly. *See, e.g., Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856 (Ala. 1989). The MCSO bears the burden of justifying nondisclosure, and it cannot baselessly invoke an exception. *See id.* at 856–57. Other than repeating statutory language, its response provides no rationale for not producing the requested materials. The Alabama Supreme Court has viewed such blanket refusals with skepticism. *See generally Allen*, 32 So. 3d at 1270–73 (rejecting commissioner’s blanket policy of refusing to disclose all prison incident reports absent evidence of adverse effect on prison system).

The CAC’s request is part of an investigation that will result in public written report. For the sake of transparency, the CAC would need to document the MCSO’s refusal to produce these public records. I hope that the MCSO, after reviewing this letter, will reconsider its position.

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

Attachment:

Record of Ammunition Purchase by State of Alabama for Alabama Department of Corrections (Feb. 24, 2020)

cc: Elizabeth H. Huntley (*ehuntley@lightfootlaw.com*)

Comptroller Open.Alabama Website

Payments by Payee for Agency, Category, Sub-Category, and Payee

Payment Fiscal Year: 2020

Payment Month: February, 2020

Agency: CORRECTIONS

Category: SUPPLIES, MAT'L, AND OPERATING

Sub-Category: AMMUNITION

Payee: GULF STATES DISTRIBUTORS INC

Date Paid: 2/24/2020

Transaction #	Fund Name	PO# or Contract #	BFY	AFY	Amount Paid
PV 005 SE200000254	GENERAL FUND	PO 005 20000002724	2020	2020	\$57,021.00
					\$57,021.00

EXHIBIT

I



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

22 March 2021

Via electronic mail

Jeff Rich
County Attorney
Madison County, Alabama
100 Northside Square, Suite 700
Huntsville, Alabama 35801

Re: Requests for Production

Dear Mr. Rich:

As you know, we are Independent Counsel to the Huntsville Police Citizens Advisory Council (the "CAC") with regard to certain matters, set out by Huntsville City Council resolution, relating to civil unrest in Huntsville in June of 2020. This note follows up on my letters to you of 3 August 2020, 21 August 2020, and 24 February 2021, as well as my letter to Chief Deputy Bates of 22 January 2021. For your convenience, I attach copies of those letters, as well as your 4 February 2021 response.

The CAC is in the latter stages of its review and, with our assistance, will produce a report that will be public. Because employees of the Madison County Sheriff's Office were involved in the events at issue, and because their involvement will be addressed in the report, we again wish to offer you this opportunity to respond meaningfully to the information requests previously submitted.

Please let me know if you have any questions.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jackson R. Sharman III", written over a light blue horizontal line.

Jackson R. Sharman III

cc: Elizabeth H. Huntley (ehuntley@lightfootlaw.com)

Attachments

EXHIBIT

J

September 2, 2020

VIA E-MAIL

Mr. Jackson R. Sharman III
Lightfoot, Franklin & White LLC
jsharman@lightfootlaw.com

Dear Mr. Sharman:

My office received your public records request of August 3, 2020, requesting Madison Police Department records pertaining to its assistance during the response to protests in downtown Huntsville in May and June.

I can confirm that nine officers of the Madison Police Department assisted the Madison County Sheriff's Office in its response to the protest at the Madison County Courthouse on June 3, 2020. The Sheriff's office requested the City's assistance because officers and deputies routinely work together on the SWAT team, and the Huntsville Police Department did not specifically request assistance. None of the City's officers engaged protestors or deployed any munitions, lethal or non-lethal, during the operation.

The City respectfully declines to provide any records or videos pertaining to the Department's response to the protests because such law enforcement investigative notes, statements, and recordings are privileged communications protected from disclosure. See, e.g., Ala. Code § 12-21-3.1(b) (noting that law enforcement investigative materials and recordings "are not public records" and are "protected from disclosure"); Tenn. Valley Printing Co., Inc. v. Health Care Auth., 61 So. 3d 1027, 1032 (Ala. 2010) (recognizing Ala. Code § 12-21-3.1(b) as creating "statutory exemptions to the Open Records Act"). State law provides no exceptions to these confidentiality requirements for records requests for citizen review board inquiries. In addition, the materials requested contain information regarding law enforcement methods and techniques, as well as officer identities, and the disclosure of such information would be detrimental to the best interests of the public. Stone v. Consolidated Publishing Company, 404 So.2d 678, 681 (Ala. 1981). Finally, the extensive request for all MPD training materials and policies is unduly burdensome and would interfere with the the operation of the Department at this time. See Blankenship v. City of Hoover, 590 So.2d 245, 248 (1991).

Do not hesitate to reach out if you have any follow up questions. I would be glad to set up a phone call to discuss this matter if you would like.

Sincerely,



Megan Zingarelli, Esq.
City Attorney

cc: Mayor Paul Finley
Chief David K. Jernigan
Trey Riley, Esq., Huntsville City Attorney

EXHIBIT

K



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

22 March 2021

Via electronic mail

Megan Zingarelli
City Attorney for Madison, Alabama
100 Hughes Road
Madison, Alabama 35758
megan.zingarelli@madisonal.gov

Re: Requests for Production

Dear Ms. Zingarelli:

As you know, we are Independent Counsel to the Huntsville Police Citizens Advisory Council (the “CAC”) with regard to certain matters, set out by Huntsville City Council resolution, relating to civil unrest in Huntsville in June of 2020. This note follows up on my letter to you of 3 August 2020 (with request for documents) and your response of 2 September 2020. For your convenience, I attach a copy of these letters.

The CAC is in the latter stages of its review and, with our assistance, will produce a report that will be public. Because employees of the City of Madison Police Department were involved in the events at issue, and because their involvement will be addressed in the report, we again wish to offer you this opportunity to respond further to the information requests previously submitted.

Please let me know if you have any questions.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jackson R. Sharman III".

Jackson R. Sharman III

Attachments

cc: Elizabeth H. Huntley (ehuntley@lightfootlaw.com)

EXHIBIT

L

From: Zingarelli, Megan <Megan.Zingarelli@madisonal.gov>
Date: Thursday, April 8, 2021 at 9:16 AM
To: Jackson R. Sharman, III <jsharman@lightfootlaw.com>
Cc: Elizabeth L. Huntley <ehuntley@lightfootlaw.com>, Susan M. Harper <sharper@lightfootlaw.com>, Stringer, John <John.Stringer@madisonal.gov>
Subject: RE: Correspondence from Jack Sharman

Jack,

I hope you are doing well. For the reasons cited in my September letter, the City cannot produce any other information. Please keep me posted on when the report will be available and how to access it.

Thank you,

Megan

From: Jackson R. Sharman, III [<mailto:jsharman@lightfootlaw.com>]
Sent: Monday, March 29, 2021 5:27 PM
To: Zingarelli, Megan <Megan.Zingarelli@madisonal.gov>
Cc: Elizabeth L. Huntley <ehuntley@lightfootlaw.com>; Susan M. Harper <sharper@lightfootlaw.com>; Stringer, John <John.Stringer@madisonal.gov>
Subject: Re: Correspondence from Jack Sharman

Megan: thank you for your response, and I hope that you are well.

What would be most helpful to the CAC would be a full response to the document request we sent last year. If MPD is unwilling or unable to respond with documents, or if there are no responsive documents in existence, we understand.

No drafts of the report will be circulated publicly, nor will there be early releases of the report.

Until the report is final and released, the CAC is not in a position to comment on evidence that it has received.

All best,

Jack

From: Zingarelli, Megan <Megan.Zingarelli@madisonal.gov>
Date: Wednesday, March 24, 2021 at 9:18 AM
To: Jackson R. Sharman, III <jsharman@lightfootlaw.com>
Cc: Elizabeth L. Huntley <ehuntley@lightfootlaw.com>, Susan M. Harper <sharper@lightfootlaw.com>, Stringer, John <John.Stringer@madisonal.gov>
Subject: RE: Correspondence from Jack Sharman

Jack:

I hope you are doing well. I received your letter regarding the Huntsville CAC report. Without knowing how MPD officers may feature in the report, I do not know how to evaluate whether to provide additional documents or whether further disclosure would be justified. Can you please provide a draft of portions of the report relating to MPD officers? Also, please let me know if any information in the draft report or any information gathered from other agencies is at odds with the information I provided in my letter in September. I have cc'd Acting Chief John Stringer, so please respond to both of us.

Thank you,

Megan

Megan Zingarelli
City Attorney
Legal Department
City of Madison
100 Hughes Road
Madison, AL 35758
(256)774-4404

NOTE: This is a communication from counsel for the City of Madison, and it may contain legally privileged and/or confidential information. If you are not the intended recipient, delete this message and attachments, and do not read, copy, use, retain, or disseminate the message or any attachment. If you have received this communication in error, please notify the sender immediately. Neither the transmission of this message or any attachment, nor any error in transmission or delivery, shall constitute waiver of any applicable legal privilege.

From: Susan M. Harper [<mailto:sharper@lightfootlaw.com>]
Sent: Monday, March 22, 2021 5:42 PM
To: Zingarelli, Megan <Megan.Zingarelli@madisonal.gov>
Cc: Elizabeth L. Huntley <ehuntley@lightfootlaw.com>; Jackson R. Sharman, III <jsharman@lightfootlaw.com>
Subject: Correspondence from Jack Sharman

Dear Ms. Zingarelli:

Please see the attached correspondence from Jack Sharman.

Best,

Susan

Susan M. Harper
White-Collar Specialist



205-581-0700 main
205-581-5814 direct
205-581-0799 fax
sharper@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



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EXHIBIT

M



KAY IVEY
GOVERNOR

ALABAMA LAW ENFORCEMENT AGENCY

201 SOUTH UNION STREET, SUITE 300 | P.O. BOX 304115 | MONTGOMERY, AL 36130-4115
PHONE 334.517.2800 | WWW.ALEA.GOV



HAL TAYLOR
SECRETARY

September 2, 2020

VIA ELECTRONIC MAIL (jsharman@lightfootlaw.com)

Mr. Jackson R. Sharman III
Lightfoot Franklin & White, LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203

RE: Records request on behalf of your client, Huntsville Police Citizens Advisory Council

Dear Mr. Sharman:

The Alabama Law Enforcement Agency ("ALEA") received your August 3, 2020 letter to Noel Barnes, ALEA's General Counsel, on behalf of your client, Huntsville Police Citizens Advisory Council, wherein you seek particular material relevant to recent events in Huntsville. Mr. Barnes forwarded your letter to me for a response.

ALEA made a significant effort toward addressing your requests. However, there are several requests that are quite detailed and to which it will take some time and attention to respond. The Agency continues to operate under Governor Ivey's ongoing "Safer at Home" directive, which means that staff who typically conduct research and document collection are on a telework/in-office work schedule.

ALEA's response to question number 8 encapsulates its level of involvement. ALEA law enforcement officers did not engage in any uses of force. No ALEA law enforcement officer present during the protest period made any arrest. ALEA's direct police action was traffic control. Other than to maintain traffic flow, ALEA Troopers took no enforcement actions. It is unclear whether ALEA Troopers issued any protest-related tickets, and the Advisory Council's requests did not contemplate such a review. However, it would be overly burdensome and vexatious for ALEA to undertake such a review, as ALEA does not maintain ticket information in a manner conducive to such a search. ALEA's answer to question number 8 drives responses to a majority of the other questions, which ALEA will formally answer in the coming days.

A copy of the ALEA Department of Public Safety Policy and Procedure Manual is attached as response to question number 12. This manual is one of several manuals that currently exist among the various ALEA divisions. If the Advisory Council prefers to have policy and procedure manuals from other ALEA divisions and that was the intent of question number 12, please let us know so we can work toward providing that.

Sharman
September 2, 2020
Page 2

If you should have any other questions or concerns, please don't hesitate to contact me.
We will be in touch.

Best regards,

/s/ F. Tim McCollum

F. TIM McCOLLUM
Assistant Attorney General

FTMc/re

Cc: Noel Barnes, General Counsel

EXHIBIT

N



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

22 March 2021

Via electronic mail

F. Tim McCollum
Assistant Attorney General
tim.mccollum@alea.alabama.gov
Alabama Law Enforcement Agency
201 South Union Street, Suite 300
Montgomery, Alabama 36104-2889

Re: Requests for Production

Dear Mr. McCollum:

As you know, we are Independent Counsel to the Huntsville Police Citizens Advisory Council (the "CAC") with regard to certain matters, set out by Huntsville City Council resolution, relating to civil unrest in Huntsville in June of 2020. This note follows up on my letter to Noel Barnes of 3 August 2020 and your letter of 2 September 2020. For your convenience, I attach a copy of each letter.

The CAC is in the latter stages of its review and, with our assistance, will produce a report that will be public. We appreciate the Alabama Law Enforcement Agency's ("ALEA") earlier response. Because employees of ALEA were involved in the events at issue, and because their involvement will be addressed in the report, we again wish to offer you this opportunity to respond further to the information requests previously submitted.

Please let me know if you have any questions.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jackson R. Sharman III".

Jackson R. Sharman III

Attachments

cc: Noel Barnes (noel.barnes@alea.gov)
Elizabeth H. Huntley (ehuntley@lightfootlaw.com)

EXHIBIT

0

From: Jackson R. Sharman, III <jsharman@lightfootlaw.com>
Sent: Tuesday, November 3, 2020 3:35 PM
To: Riley, Marion
Cc: Elizabeth L. Huntley; Rizzardi, Jeanne D.
Subject: Re: HPD review -- meeting in anticipation of interviews

Trey: thanks very much. I will call Jeanne to set something up. Basically, I think it would be useful to have a meeting with HPD representatives before we undertake interviews of individual officers, which will be extensive. We want everyone to have a general sense of schedule, how and where we are we planning to conduct them, and how to address any issues that might arise during the interviews.

With regard to the chief's presentation to the CAC, we appreciate the offer and will raise that with the chair and get back to you. Given the number of HPD witnesses that we need to interview, I do not think there will be any issue at all with HPD's narrative being offered and explored.

Jackson R. Sharman, III
Attorney



205-581-0700 main The Clark Building
205-581-0789 direct 400 20th Street North
jsharman@lightfootlaw.com Birmingham, AL 35203



[Confidentiality Notice](#)

White Collar Wire

lightfootlaw.com

From: Riley, Marion <marion.riley@huntsvilleal.gov>
Sent: Tuesday, November 3, 2020 2:47 PM
To: Jackson R. Sharman, III
Cc: Elizabeth L. Huntley; Rizzardi, Jeanne D.
Subject: RE: HPD review -- meeting in anticipation of interviews

Jack,

My office will be happy to assist you with scheduling meetings with appropriate HPD personnel in furtherance of your work in response to the City Council's charge for a review by the HPCAC. Please refer such requests to Jeanne Rizzardi, one of my Assistant City Attorneys, who works extensively with

HPD and can facilitate scheduling the interviews you need, while also addressing any concerns in behalf of those being interviewed. Jeanne's general number is the same as mine (256)427-5026, and her direct number is (256)427-5033.

Secondly, there is an issue I've been meaning to address, but neglected to do so. Specifically, immediately before, or contemporaneously with, your retainer to assist the HPCAC, one of the first presentations to the CAC was by HPD in the form of a detailed presentation of the events of June 1 & 3. The presentation lasted several hours and constituted a primary presentation by HPD of the events being reviewed from HPD's perspective and the reasons for decisions made. Unfortunately, almost half of the CAC membership was unable to attend and, of course, neither you or Liz was able to attend. The Chief has advised from the beginning he was happy to repeat the presentation for those CAC members unable to attend the first one, and we also felt it would assist you and Liz in your duties. Since that presentation, the HPCAC has received a steady diet of "input" from critics of HPD's responses, without rebuttal opportunity for HPD. It would seem, at a minimum, fairness would dictate that all the members of the HPCAC and its counsel should hear and consider the primary input from HPD. Your thoughts?

Finally, under separate cover, I will be forwarding comments received by one of the Council members, which comment included a request that he forward same to you, but which he asked me to forward so as to preclude direct communication between him and the HPCAC or its counsel (in order to avoid an appearance the Council or its members were seeking to affect the outcome of the review). Of course, by forwarding the communication, you should know I am not endorsing the ideas conveyed, but merely performing a custodial duty of forwarding same.

Let me know your thoughts.

Trey Riley
City Attorney
P.O. Box 308
Huntsville, AL 35804
(256) 427-5026
Trey.Riley@huntsvilleal.gov

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From: Jackson R. Sharman, III [<mailto:jsharman@lightfootlaw.com>]
Sent: Monday, November 2, 2020 11:27 AM
To: Riley, Marion <marion.riley@huntsvilleal.gov>
Cc: Elizabeth L. Huntley <ehuntley@lightfootlaw.com>
Subject: HPD review -- meeting in anticipation of interviews

Trey: I hope that things continue to be well with you.

We are still working through documents and video, but we need to schedule a meeting with the appropriate persons at HPD to discuss the upcoming interview process. As you can imagine, there are a fair number of witnesses. We want the interview process to be as least disruptive as possible to officers' duties while at the same time discharging our own duty to conduct thorough interviews.

For these purposes, are you representing the HPD and thus we should work through you and your office? Or, should we reach out to the HPD directly? If the latter, please let us know who the correct person is and their contact information.

Thanks much for your help.

Jack
(205) 936-1789



Jackson R. Sharman, III
Attorney



205-581-0700 main The Clark Building
205-581-0789 direct 400 20th Street North
jsharman@lightfootlaw.com Birmingham, AL 35203

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White Collar Wire

lightfootlaw.com



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

11 November 2020

Via electronic mail

Trey Riley, City Attorney
trey.riley@huntsvilleal.gov
Jeanne D. Rizzardi, Assistant City Attorney
jeanne.rizzardi@huntsvilleal.gov
City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

Lt. Jonathan Ware
jonathan.ware@huntsvilleal.gov
Huntsville Police Department
815 Wheeler Avenue NW
Huntsville, Alabama 35801

Dear Trey, Jeanne, and Lieutenant Ware:

Thanks very much for making time to meet with us yesterday to discuss interviews of Huntsville Police Department (“HPD”). We appreciate your concerns and believe that the meeting was productive.

In order to keep moving forward with the review as mandated by the Huntsville City Council, we would very much appreciate receiving HPD’s position with regard to making officers available for interviews in the manner and under the conditions that we discussed. For reasons of logistics and other preparations, it would be very helpful to receive your position next week.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jackson R. Sharman III".

Jackson R. Sharman III

cc: Elizabeth H. Huntley (ehuntley@lightfootlaw.com)



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

18 November 2020

Via electronic mail

Trey Riley, City Attorney
trey.riley@huntsvilleal.gov
Jeanne D. Rizzardi, Assistant City Attorney
jeanne.rizzardi@huntsvilleal.gov
City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

Lt. Jonathan Ware
jonathan.ware@huntsvilleal.gov
Huntsville Police Department
815 Wheeler Avenue NW
Huntsville, Alabama 35801

Dear Trey, Jeanne, and Lieutenant Ware:

This note follows up on my letter of 11 November 2020 with regard to interviews of Huntsville Police Department employees. We understand that there are a number of considerations in play, but we would very much appreciate your position on this question as soon as possible.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Jackson R. Sharman III', written over a light blue horizontal line.

Jackson R. Sharman III

cc: Elizabeth H. Huntley (ehuntley@lightfootlaw.com)



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

1 December 2020

Via electronic mail

Trey Riley, City Attorney
trey.riley@huntsvilleal.gov
Jeanne D. Rizzardi, Assistant City Attorney
jeanne.rizzardi@huntsvilleal.gov
City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

Lt. Jonathan Ware
jonathan.ware@huntsvilleal.gov
Huntsville Police Department
815 Wheeler Avenue NW
Huntsville, Alabama 35801

Dear Trey, Jeanne, and Lieutenant Ware:

I hope that you and your families had an enjoyable and safe Thanksgiving holiday.

This letter responds to Trey's email of 23 November 2020 concerning law enforcement interviews.

The CAC was surprised by and disappointed in the decision by the Huntsville Police Department ("HPD") to refuse to provide for interview law enforcement officers involved in the events of June 1 and 3. As you know, reviews have been conducted or are being conducted across the country with regard to the response of law-enforcement agencies to civil unrest related to the death of George Floyd. To my knowledge, HPD is the only police department anywhere in the country that has flatly refused to offer its officers for interview pursuant to the relevant authority, resolution, or regulation.

With respect to authority, I disagree with your conclusion that HPD (or the City, for that matter) is so handicapped that it cannot compel law-enforcement officers to submit to an interview. That compulsion is important because, as you correctly note, compulsion is necessary for the officers' *Garrity* protection -- and *Garrity* protection is exactly what the CAC wishes to provide HPD officers with regard to interviews. A simple order from the chief of police to sit for interviews would suffice for compulsion purposes.

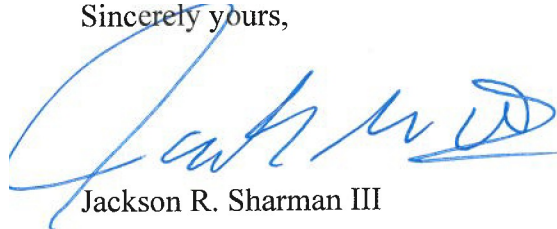
Trey Riley
Jeanne D. Rizzardi
Lt. Jonathan Ware
11 November 2020
Page 2

Without such interviews, the City and HPD have put the CAC and its mission in peril. Imagine if you were retained to conduct an internal investigation or review at a corporation concerning potential accounting malfeasance, or significant HR violations, or kickbacks. You might be provided relevant emails, written policies, and security camera footage. If the CEO refused to let you interview any employees, however, your ability to make a full, fair, and nuanced assessment could be compromised.

Despite this obstacle, the CAC will continue with the assignment provided by the Huntsville City Council, with or without HPD's cooperation, and will render a fair public report, one as thorough as possible under the circumstances.

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

cc: Elizabeth H. Huntley (ehuntley@lightfootlaw.com)



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

21 December 2020

Via electronic mail

Trey Riley, City Attorney
trey.riley@huntsvilleal.gov
Jeanne D. Rizzardi, Assistant City Attorney
jeanne.rizzardi@huntsvilleal.gov
City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

Lt. Jonathan Ware
jonathan.ware@huntsvilleal.gov
Huntsville Police Department
815 Wheeler Avenue NW
Huntsville, Alabama 35801

Dear Trey, Jeanne, and Lieutenant Ware:

This letter follows up on our discussion of law enforcement interviews, including Trey's email of 23 November 2020; my letter of 1 December 2020; and Trey's email of 17 December 2020.

I renew the CAC's request to interview Huntsville Police Department ("HPD") law enforcement officers involved in the events of June 1 and 3. *Garrity* protection is exactly what the CAC wishes to provide HPD officers with regard to interviews. A simple order from the chief of police to sit for interviews would suffice for compulsion purposes.

Under separate cover, we will provide your office with a list of HPD officers, based on our review to-date, who were apparently involved in the events of June 1 and 3. If any of them will agree to be interviewed, please let me know.

The CAC and its Independent Counsel would welcome the Chief as a witness for an interview. So as to treat all witnesses fairly, the Chief's interview would be conducted in the same manner as we are scheduling other ongoing interviews:

1. **Closed-door interview**. Like all of the upcoming non-HPD interviews, it will be private. In other words, the public would not be invited or allowed.
2. **Location TBD**. We are working on the exact location and will advise after a date and time is set.

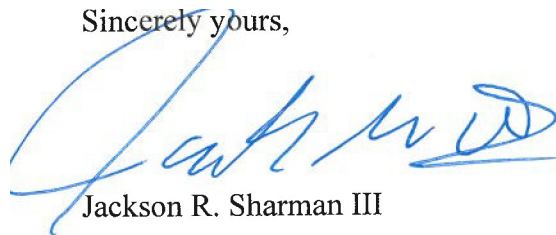
Trey Riley
Jeanne D. Rizzardi
Lt. Jonathan Ware
21 December 2020
Page 2

3. **Memorialization**. A transcript will be made.
4. **Statement**. The Chief will be invited to make an opening statement, although he will be encouraged to bring to the CAC's attention new information (that is, matter that is not contained in his prior presentations, which the CAC has reviewed).
5. **CAC**. The Chief will then be questioned by members of the CAC.
6. **Independent Counsel**. The Chief will then be questioned by Independent Counsel.
7. **Exhibits**. To the extent that either the CAC or Independent Counsel (or both) refers to documents or other exhibits in their questioning, we will make every reasonable effort to get them to you in advance.

Please let me know if the Chief or any other members of HPD agree to be interviewed.

With best wishes, I am

Sincerely yours,



Jackson R. Sharman III

cc: Elizabeth H. Huntley (ehuntley@lightfootlaw.com)



JACKSON R. SHARMAN III
Writer's Direct Dial: 205-581-0789
E-Mail: jsharman@lightfootlaw.com

January 7, 2021

Via electronic mail

Trey Riley, City Attorney
trey.riley@huntsvilleal.gov
City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

Dear Trey:

Transmitted herewith is a list of potential Huntsville Police Department ("HPD") interview subjects.

We have collected these names based on materials previously provided by HPD, including video and documents. The list is alphabetical. Given the useful but limited data available from the video and the documents, we have not attempted to draw distinctions among witnesses as to their relative potential significance or insignificance. We would be happy to consider input from you in that regard.

Please let us know if any of these witnesses are amenable to being interviewed.

With best wishes I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Sharman III".

Jackson R. Sharman III

Enclosure

cc: Jeanne Rizzardi (jeanne.rizzardi@huntsvilleal.gov)
Lt. Jonathan Ware (jonathan.ware@huntsvilleal.gov)
Elizabeth Huntley (ehuntley@lightfootlaw.com)

Huntsville Police Officers Requested for Interview

[REDACTED]



Jackson R. Sharman III
Lightfoot, Franklin & White LLC
205.581.0789 direct
jsharman@lightfootlaw.com

8 January 2021

Via electronic mail

Trey Riley, City Attorney
trey.riley@huntsvilleal.gov
City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

Dear Trey:

This letter follows up on our discussions about the Chief's interview.

Date, Time, and Location. Let's plan on January 25 beginning at 10 AM. We are securing a Covid-appropriate location, most likely the meeting room in the engineering building that the CAC has used previously.

Presentation. As I mentioned in my December 21 letter, the CAC would welcome it if the Chief wishes to make a presentation. Because the CAC members have reviewed his previous presentations, it would be most helpful if he were to present new matter, but the content of his presentation is up to him.

Questioning. Consistent with the December 21 letter, the Chief will then be questioned by Independent Counsel and by those CAC members who are in attendance and who have questions. There is certainly no intent to make this proceeding, in your words, a "gotcha" interview. As long as the Chief responds to questions fully and to the best of his ability, as I am confident he will, I do not see any issue.

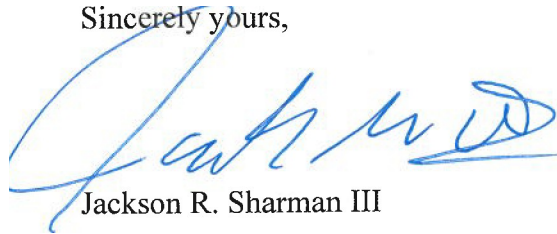
Topics. The areas of inquiry should be obvious, given the Huntsville City Council's charge to the CAC. They include, but are not limited to, the events of June 1 and of June 3, including, from HPD's perspective, the "before," the "during," and the "after" of the events on each day. Subsidiary topics might include training (both policies and application on the ground); "intelligence" (including its application in these instances); civil unrest experience and background; weapons (both non-lethal and environmental agents); the role of other agencies; internal HPD reviews and discussion before and after the events of both June 1 and June 3; responses to citizens' complaints that the CAC received in its public listening sessions; HPD communications before, during, and after these events; and other relevant areas.

Trey Riley
8 January 2021
Page 2

Documents: to expedite the questioning, and to make it more specific, we are preparing exhibits. To minimize the handling of documents by multiple persons, we will provide exhibit binders for the Chief's use.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jackson R. Sharman III". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jackson R. Sharman III

cc: Jeanne D. Rizzardi (jeanne.rizzardi@huntsvilleal.gov)
Lt. Jonathan Ware (jonathan.ware@huntsvilleal.gov)
Elizabeth H. Huntley (ehuntley@lightfootlaw.com)