

RESPONSE TO THE 9TH SEMIANNUAL REPORT (MAY 30TH RIOT)

The following provides a brief response from the Cleveland Division of Police (“CDP”) to selected comments included in the Monitor’s Ninth Semiannual Report. The City’s response will identify by title, section, and page number of the Monitor’s Report where the CDP response is directed. Where language from the Monitor’s report is helpful it is extracted to place the comments into context. The City’s Response is provided in Italicized font. Where the comments respond to recommendations from the Monitor, CDP attempts to identify the current status - where changes have already been enacted and where changes are currently being addressed and in progress.

Monitor’s Ninth Semiannual Report

I. Executive Summary (Pages 1-5)

2. Recommendations (page 3)

a. The CDP needs to improve transparency, communication, and community engagement efforts prior to major planned demonstrations. Such improvements should include:

- i. Prior to anticipated demonstrations and protests, sharing plans and expectations for crowd and police behavior;
- ii. Regularly updating social media channels and blogs, and sharing information via other means of communication with the public;
- iii. Contacting community resources prior to similar such events, in particular the Community Policing Commission but also other community partners at non-profits, neighborhood groups, tenant associations, foundations, faith-based organizations, to discuss plans and expectations and to seek collaborative planning and response to demonstrations.
- iv. Conducting after-action meetings with these community resources, in particular the CPC, to draw from experience and wisdom to discuss lessons learned and plan for improved future response.

CDP Response/ Status- Enacted

CDP, as a policy, meets with all event organizers on the day of their protests and at times work hand in hand with them prior to the event. We ask the organizer(s) to submit their plan(s) for the demonstration and if they will be marching in the street. During the meeting with the organizer(s), we advise them of our expectations for the day and offer to best assist them in their efforts. This is captured on body camera and police radio is also notified and documented. On many occasions, we have attempted to meet with protest organizers but they refuse to meet or we are told that they have no leader. As noted in the AAR on page 6 we did make contact with the organizer. CDP was informed that the protesters had no plans to march, however, they did and CDP adjusted and monitored the group as they marched.

Moreover, Chief Williams and Mayor Jackson participated in several radio programs as it related to the community exercising their First Amendments Rights to Free Speech and the expectations for non-violence prior to the May 30, 2020 protest and riot.

Some protest organizations do not want to be seen on social media working with police departments in general. CDP’s goal is to assist demonstrators to safely express their First Amendment Right to Free Speech.

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b. The Use of Force Policy and the Crowd Management Policy need to be harmonized, with clear directions for the use of all less lethal tools available to CDP. (page 3)

CDP Response/ Status- Committee formed

As identified on Page 36 of the City's After Action Report ("AAR"), CDP has acknowledged a need to update the current crowd management G.P.O and use of force reporting G.P.O. to be in harmony with each other. A committee has been formed to review and provide recommendations to the policy unit. The committee has met on Feb 10th and Feb 22nd, 2021 with future meetings to be scheduled.

c. The Use of Force reporting policy should be reexamined, to ensure that the reporting for use of force during demonstrations is timely and consistent. (page 3)

CDP Response/ Status- Enacted

As identified on Page 36 of the AAR, CDP has acknowledged a need to have timely and consistent reporting of the use of force. Officers receive training on the UOF policy and Crowd Management GPO as it relates to peaceful demonstrations, riots and civil disobedience. All certified grenadier officers (CSU and ERT) for 2021 have been trained and tested on the use of force policy and current crowd management policy and DN 16-178. This will include all Event Response Team (ERT) and Community Services Unit (CSU) officers as we begin quarterly training.

d. The Use of Force review process should be reconsidered for demonstrations to ensure that all use of force is reported timely and reviewed appropriately. (page 4)

This reconsideration should incorporate lessons-learned from this event, align with how CDP intends to review force in the demonstration context, and should distinguish between discretionary force used by individual officers and strategic force ordered as part of an overall field force effort.

CDP Response/Status- In Progress

As identified on Page 36 of the AAR, CDP has acknowledged a need to update the current crowd management G.P.O and use of force reporting G.P.O. to be in harmony with each other. This is currently being updated by the previously discussed committee. Further all members are currently being trained to the policy of individual use of force and use of force during crowd management and riots. Please note during demonstrations (peaceful) no use of forces have ever been reported by CDP over the past several years.

e. Subject to Recommendation (d) above, CDP must ensure that the active use of force policy is complied with by each officer that uses force, each officer that observes force, and the supervisors reviewing each use of force. (page 4)

This requires consistent enforcement to ensure:

i. All officers who use any level of force, per CDP policy, report the force fully, timely and follow the instructions for how to submit the force report,

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- ii. All officers who observe any level of force, per CDP policy, report the force fully, timely and follow the policy for submitting the force report,
- iii. All supervisors who review force do so in compliance with the requirements outlined in CDP policy, to include ensuring that force is reasonable, necessary and proportional, that reports are complete and do not use boilerplate language, and supervisors must conduct this review according to CDP policy-mandated timelines.
- iv. Commanders must consistently enforce use of force policy violations, to include use of force reporting and review violations, in line with CDP's disciplinary system to hold officers and supervisors accountable for policy violations.

CDP Response/Status- In Progress

As identified on Page 36 of the AAR, CDP has acknowledged a need to update the current crowd management G.P.O and use of force reporting G.P.O. to be in harmony with each other. This is currently being updated by the previously discussed committee.

The policy is being updated to contain language that involves riot situations and how to properly report the use of force and what each officers roll will be in the reporting process. Riots cannot be treated in the same fashion as normal in the field use of force reporting procedure as they are unique to each situation.

- f. **CDP must anticipate the need for BWC usage during future demonstrations and protest events, and resolve the current problem that BWCs cannot be mounted on officers' "turtle gear." (page 4)**

CDP Response/Status- Enacted

This has been corrected with proper BWC mounts and new PPE gear for ERT, CSU and Grenadier officers.

- G. **CDP should plan for future needs to issue dispersal orders by ensuring that appropriate sound equipment is available to clearly and audibly give dispersal orders. (page 4)**

Additionally, CDP should consider whether making a prerecorded warning that can be played every few minutes might best serve the Division in future crowd control situations. Furthermore, the Division should consider including the actual Dispersal order within policy for easy reference in training and operations.

CDP Response/Status- In Progress

Currently in the process of purchasing an adjustable acoustic device with decibel meter to address the above issue. The equipment under consideration will have the ability of a prerecorded messages or deliver live messages. Procedure is currently in place to gain acknowledgement from undercover or uniformed officers that the message was heard behind the crowd. CDP is currently working on incorporating the dispersal order into the crowd management GPO.

- h. **CDP should consider redrafting its Mutual Aid MOUs to clarify expectations around command structures and use of force in particular to ensure consistency. (page 5).**

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CDP Response/Status- In Progress

As identified on Page 31 of the AAR, CDP acknowledged a need to brief our MOU partners prior to large events. This will include bi-annual training with ERT, CSU and Grenadier officers. This will allow the command structure to be cemented in future riotous events.

i. CDP should make several improvements related to its deployment of the Incident Command System. (Page 5)

These include:

- i. Adopt a protocol that requires an agency-wide, blame-free examination for all aspects of major events.
- ii. Provide at least annual training for all members that covers crowd management and control techniques.
- iii. Conduct cross training with the City Office of Emergency Management (OEM) modify policy as needed to ensure consistency between all ICS forms used and to ensure consistency and unity of ICS organizational command.
- iv. Review and revise their policy on MFF tactics, GPO 3.3.02 to reflect the changes that are in place in MFF assignments such as Tier 1 and Tier 2, as well as designating the rank of the Field Force Commander.
- v. Revise policies related to ICS to ensure that positions of leadership are filled based on the incident level and individuals are fully accountable for fulfilling role-specific ICS objectives.
- vi. Consider realigning their ICS procedural guidelines to transition responsibilities of critical incident management and planning to the Bureau of Homeland Special Operations for any incident that has the potential of encompassing multiple operational periods or cross jurisdictions such as level 2 or 1 incident.
- vii. Use terminology, verbiage and nomenclature consistent with FEMA NIMS/ICS to include *Incident Action Plan* ('IAP') for larger scale operational incidents.
- viii. Focus on initial response protocols including clearly identifying an operational chain of command for each incident, and timely identifying an Incident Command Post (ICP).
- ix. Ensure consistency when developing Operational entities such as Groups or Branches along functional or geographic lines based on operational objectives, rather than just listing them to ensure they are accounted for; and designate a leader for each such entity, consistent with effective span of control objectives.

CDP Response/Status- Enacted

As identified on Page 29 of the AAR, CDP acknowledged improvements were needed and have begun the implementation of several of the above items. Going forward events will be debriefed during the demobilization process to look for improvements and what worked well. This process mentioned was utilized the 2020 Presidential Debate held on the campus of the Cleveland Clinic Foundation. Currently all ERT, CSU and Grenadiers have begun training quarterly and outside MFF units with MOU's will train bi-annual with our teams.

As previously responded above (b.-d.)the Crowd Management Policy is being updated to be consistent with the FEMA FFO (Field Force Officer) training manual. We have also added structure to the MFF supervisor roles as it relates to large riotous call up. CDP has updated who is tier 1 and tier 2 as well as specific rolls for all units within the Division. As of Jan 2021 we have trained platoon level ERT teams at each district to handle civil unrest and peaceful demonstrations.

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Currently Field Operations is responsible for the MFF response with Homeland Special operation in a support roll. This roll works well during normal demonstrations but training has increased to include outside MFF units and a seamless blending of officers on larger riotous call outs. Currently there is not a need to transition away from this model.

CDP conferred with trainers of NIMS/ICS prior to the May 30th riots regarding a question to them about EAP versus IAP and how CDP uses the terms. As long as it is a preplanned event (EAP) and a sudden and unexpected incident (IAP) CDP was good within their eyes and consistent with training and the IACP model of crowd management dated April 2019 (page 4- Crowd management Plan). Currently all preplanned events have a plan attached to them for division members to refer to. This has been implemented since 2016. Protests in the City of Cleveland that an EAP plan was created are as follows: 2016-4, 2017-9, 2018-4, 2019-1, 2020-53 and 2021-2.

All current ICS plans now include multiple staging locations based on the central location of the demonstration. The ICS plan has the clearly defined chain of command on the 203's and briefed during roll call. We are currently creating an Incident Command G.P.O with the assistance of the IACP model. We have also updated the ICS plan to go along the lines of functional and or geographic responsibilities.

II. Demonstration Review (pages 6-16)

5. Community Experience (page 11)

a. Public Feedback Provided to the Monitoring Team (Page 12)

In an effort to obtain information about the public experience during the protests that occurred between May 26 and June 12, 2020 in Cleveland, Ohio, the Monitoring Team opened a feedback portal on its website using Google Surveys.²⁴ A simple feedback instrument was created to collect information from the public about direct or observed experiences of the protests. This feedback process is neither a scientific study nor a statistically significant survey. Instead, it served as a way for the Monitoring Team to hear about the particular experiences of certain respondents - which is useful for CDP to consider as it continues to improve its efforts at building trust with the public.

Aiming to reach as many individuals as possible, the Monitoring Team sent via email a request to distribute the feedback form to various Cleveland community organizations and individuals with large networks, such as the Community Police Commission. Ultimately only sixty-nine individuals provided feedback through the instrument. Furthermore, while the majority of the feedback respondents stated that they observed the protests at the Justice Center on May 30, some only did so through media or social media (as opposed to in-person), and others only observed protest activities after May 30.

CDP Response

The statements cited by the Monitor establish that very little feedback was received from the thousands that showed up on May 30 to the protest that turned riotous. The reference to Sixty-nine commenting respondents is not believed to be a fair representation of the larger community or a definitive basis for assessment. The CDP acknowledges the Monitor recognizes that the limited comments "may not necessarily be representative of all or even most Cleveland

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residents”(Report at p. 13).The limited nature of the comments includes comments based on second hand knowledge and others showing a wide disparity in responses, as exemplified by comments that included the observation that CDP was understaffed and underprepared while another commenter indicated CDP was showing a heavy police presence. The CDP does take note of the substance provided in the comments.

iv. Police Use of Equipment and Weapons (Page 16-17)

Most of the respondents believe that the weapons, equipment, and force used by the CDP was excessive and used indiscriminately for the circumstances, and others suggest that the police were understaffed and underprepared. There are clear expressions of frustration by the public in describing the heavy police show of force, with descriptions that they saw the “posting of snipers” , officers dressed in “SWAT” and “military” gear and the use of horses, believing that was unnecessary and intimidating. One person’ s response revealed a belief that officers used force when not necessary, witnessing them “launching tear gas canisters over the crowd into the park across the street where families with children were holding signs. ... I understand that they were being hit with them [water bottles]. But they were in full riot gear, and the cops in yellow were already behind them. It's just not OK to do that. They were targeting medics, people who clearly had marking such as a cross like the one Red Cross uses, whom were carrying injured people away.”

Other respondents used similar language and believe that those providing and receiving medical care were targeted by the police.

Below is a list of equipment/resources the public believes were in use by the CDP during the protest period based on reports by observers.

- Beanbag guns* **Not used by CDP**
- Police on bicycles
- Chemical weapons and gases (pepper spray, tear gas*, tear gas bombs*) **Tear gas and gas bombs not used by CDP**
- Flashbangs
- Police on horses
- Snipers on roofs **(High ground officers)**
- Plain clothed police in the crowds
- Private cell phones for communication versus radio
- Rubber bullets*
- Rubber grenades
- Sound cannons* **(Not used by CDP)**
- SWAT gear

CDP Response

CDP did not post snipers on rooftops. CDP did not use tear gas, tear gas bombs, beanbag guns, rubber bullets, sound cannons, and officers posted at high points were not “snipers” as suggested by one commenter.

6. Use of Force Timeline (Pages 19-31)

CDP Response

Numerous items on the timeline are missing context and paint an incomplete picture of the actions undertaken by CDP on May 30. The use of incomplete media references that appear to be subjective without complete context is misleading to the actual events at hand.