

City of Kalamazoo

INDEPENDENT REVIEW OF
KALAMAZOO DEPARTMENT OF
PUBLIC SAFETY IN TWO 2020
CRITICAL INCIDENTS:
COMPARISON, ANALYSIS, AND
RECOMMENDATIONS

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Introduction

As May advanced toward June in 2020, the murder of George Floyd in Minneapolis became the flashpoint for a series of demonstrations across the country that were unprecedented in their size, duration, and intensity. Political polarization and the impacts of COVID-19 may well have contributed to this phenomenon. But the unquestionable focus of it was American law enforcement and its fraught relationship with African-Americans and other communities of color.

It was a movement that animated a range of conversations and calls – or demands – for reform across a range of topics. These included “defunding” the police (or otherwise reallocating public spending), new proposals for regulating the use of deadly force by officers, and new approaches to accountability and public influence over local law enforcement agencies.

Interestingly, though, the protest activity that dominated those days was *itself* the source of collateral layers of concern and criticism. Not only was police violence central to the narrative of unacceptable racial inequity that lay at the heart of the protests, but the police *response* to those protests either reinforced existing divisions or produced new ones. That was the case in Kalamazoo, and the events of last year as they unfolded in that City eventually gave rise to the review project that produced this Report.

To be sure, there were common themes across jurisdictions in the stories that emerged about the unrest: the tension between maintaining order and facilitating First Amendment expression, the debate about the various crowd control measures and force options that law enforcement agencies deployed, the difficulty in addressing vandalism and looting as it occurred on the periphery of sincere, legitimate demonstrations. These issues added new dimensions in real time to the underlying discussions about discrimination and police-community relations.

Naturally, though, local experiences were distinctive as well – a function of past history, demographics, circumstance, and other potential influences.

Some cities saw violent nightly protests that continued for months. In yet another, protesters created an “Autonomous Zone” with no police presence and maintained it for weeks. In some cities, a single contentious standoff or individual use of force or viral video emerged as emblematic of the larger disconnects and became the focus of calls for review. There were many locations in which police faced withering criticism from opposing directions: for “allowing” widespread looting and vandalism to occur *and* for unduly heavy-handed treatment of peaceful protesters. Curfews generated lawsuits in many of the cities that utilized them; other places never took the step of imposing one.

Kalamazoo occupies a distinctive space across this array of narratives. It certainly experienced a part of the “Black Lives Matter” protests’ widespread intensity during a period that lasted primarily from May 30 to June 2. The Kalamazoo Department of Public Safety (“KDPS”) navigated significant challenges in those days – and could point to successes in their controlled force deployments and ability to maintain order as legitimate protest devolved into vandalism and unruly behavior. But they faced questions and criticism as well – particularly regarding the deployment of chemical munitions and its aggressive enforcement of a curfew on the night of June 2. The Department’s subsequent explanations failed to resolve all of the frustrations that had emerged. Some residents – even those with positive impressions of KDPS based on recent initiatives – felt that their confidence in the agency had been disappointingly undermined.

While many of these issues remained unresolved as the summer wore on, a second incident – the Proud Boys march on Saturday, August 15 – re-framed those earlier encounters by providing what many people considered a study in contrasts. Where the Department had been pro-active and decisive at times in shutting down activity on June 1 and 2, it adopted a notably “low profile” strategy in its initial responses to the Proud Boys’ provocative, well-publicized arrival in the City that afternoon. Unfortunately – but predictably – encounters between the Proud Boy demonstrators and counter-protesters soon descended into physical clashes. The ensuing KDPS enforcement actions spurred a second wave of public scrutiny and left the impression that the Proud Boys had been given more latitude and support than had demonstrators for racial equity and police accountability.

The seeming dissonances between the KDPS approach in early June and its actions on August 15 brought renewed energy to the City's plans for a formal review. By early September, the City Commission had formed a sub-committee to conduct an internal review of strategies for engaging with future demonstration activity. The City had also announced the imminent departure of the KDPS Chief in the aftermath of August's extensive public criticism. And the City had finalized its request for a study that would assess KDPS use of force in the context of the two protest events.

The independent review project was subsequently assigned to OIR Group, a team of police practices experts from southern California.¹ Though constrained by travel restrictions as the pandemic stretched into the new year and beyond, OIR Group's members gathered information – and perspectives – from a variety of sources within the City. This included multiple interactions with KDPS leadership, two public “listening sessions” for community members to offer their input, targeted listening sessions with community groups, individual conversations with both elected and appointed City officials, and communication from members of the public who availed themselves of the chance to share their views by phone or written correspondence. Our analysis also incorporated the materials that were provided to us by KDPS, both at our request and in the context of two detailed presentations they offered in summary of the events of May 30-June 2 and August 15.

The body of this Report is intended to provide substantive explanations for our findings as well as practical ideas for reform that we hope will positively influence the future. We look at each of the key events in turn and assess the strengths and limitations of the KDPS decision-making and enforcement

¹ OIR Group has been working in the field of independent oversight of law enforcement for two decades. It is led by Michael Gennaco, a former federal prosecutor and a nationally recognized leader in the oversight field. OIR Group has provided a range of auditing, monitoring, and investigative services for jurisdictions throughout California and in several other states. It specializes in evaluating and seeking to strengthen law enforcement policies, practices, and accountability measures. In addition to its work in Kalamazoo, OIR Group has conducted reviews of the police response to protest activity in three cities since the George Floyd demonstrations of 2020. Its website is www.oirgroup.com.

activity across several areas. But the major impressions that emerged from this process are somewhat straightforward, and we summarize them here.

KDPS did a number of things effectively in the course of responding to events that were, for a mix of reasons, exceptional and difficult to “get right.” At the same time, the disconnect with large segments of the community was real, and the Department’s defensiveness and ineffective communication compounded this phenomenon. This manifested itself most directly in the planning and decision-making that unfolded on August 15, when KDPS’s initial reticence about engaging segued into enforcement activity that weighed far more heavily on counterdemonstrators than on the Proud Boys.

In late May and early June, the Department’s actions helped the City avoid many of the pitfalls, harms, and missteps that arose in multiple other jurisdictions. Property damage and looting were minimized, and the KDPS uses of force – though controversial – did not lead to significant injuries or reflect a rogue, punitive mentality. There were, however, legitimate questions that arose from those days. The use of tear gas as a crowd control measure was extraordinary, for example, and the deployment of chemical munitions against individuals who were lying in the street, seemingly passive, created troubling visuals. There were concerns that the response was excessive and lacking in nuance – that the Department’s reaction to limited destructive behavior at times became a broad brush that violated the spirit of First Amendment protections. This impression was crystallized for many when a newly imposed curfew on June 2 was enforced against a crowd of protesters who had taken over an intersection but were otherwise peaceful.

Unfortunately, if understandably, Department leaders seemed to chafe in reaction to the ensuing criticism. They did (and do) cite explanations for many of the steps that were taken in those days. They pointed with pride – and some justification – at the restraint and professionalism of their officers as they encountered widespread challenges and absorbed the hostility of the anti-police movement. And they emphasized the initiatives of recent years that showed their bona fides as a progressive agency.

All of these were legitimate points. But one ironic effect of the Department’s positive accomplishments is that they seemed to serve as barriers to the fair and objective internal consideration of the complaints and questions that were

pouring in to City officials. In a pattern that continued through many of their interactions with OIR Group, Department leaders gave little quarter when it came to acknowledging *any* sort of shortcoming or “learned lesson” from the challenges of those four days.

This dynamic not only did little to assuage the negative perceptions of many residents, but it also apparently influenced the Department’s preparations for and response to the Proud Boys event two months later – and not in a positive way. The decision to remain ready but “off-stage” at the outset of the Proud Boys march seems to have been driven in part by the negativity their crowd control techniques had engendered in June. This was true in spite of the fact that the situations were clearly distinguishable – that the antipathy *toward law enforcement* that had provided the very essence of the George Floyd demonstrations was subordinate in August to the enmity between a white supremacist group from outside Kalamazoo and a passionate group of counter-protesters.

We discuss the Department’s thinking – and acknowledge the unenviable set of choices with which it was faced – below. Importantly, there is no evidence to suggest that the Department intentionally favored the Proud Boys or were at all sympathetic to their divisive messaging.

For much of the public, though, the results that day seemed to speak for themselves. The march quickly and unsurprisingly devolved into violence. The Proud Boys contingent left Kalamazoo with the assistance of the late-arriving KDPS officers. Remaining protesters found themselves confused and frustrated by the enforcement of a police zone that required them to leave the area. And the handful of arrests that day included that of a media member and a “legal observer,” thereby magnifying the perceptions of a misguided KDPS approach.

In looking at the events of August 15, we found that the Department’s initial strategy was flawed, that its subsequent characterization of the counter-protesters as the aggressors was over-simplified, and that the choice to shut down further demonstration activity landed unfairly on peaceful counter-protesters. And, again, poor communication with the public in the aftermath added to the frustration and diminished trust.

We wish to emphasize that there was no evidence of malice in the KDPS handling of the different events from last summer, and several components that were commendable. For example, there were the efforts of a KDPS command staff member to engage personally with protesters on the night of June 2, including his willingness to “take a knee” with them in an effort to forestall confrontation over the curfew enforcement, even though those efforts ultimately proved unsuccessful. And we acknowledge that, of the flaws that we identify in the various KDPS responses, a certain degree of perspective is important; for example, the lack of significant injury to subjects of force is an important mitigating factor that many jurisdictions did not share. We note also that many of the individual residents who contacted us were supportive of KDPS and questioned the harsh narratives that had emerged.

Moreover, we recognize the validity of the Department’s perspective regarding many of the disputed events. As we discuss below, the evidence that it shared with us complicates the binary conclusions that were advanced by some initially as to “right” and “wrong.”

These latter points are to say that recommendations for improvement should best be understood against the backdrop of an agency that does several things well and thoughtfully. But KDPS’s many attributes are seemingly subject to being undermined by a heightened sensitivity to challenge (and even well-meaning questioning) and a measure of tone-deafness with regard to community concerns and evolving expectations. We encourage KDPS to build on its strengths by embracing a paradigm of clear communication, receptivity, rigorous self-scrutiny, and openness to reform.

Following a discussion of our Methodology, including a detailed summary of the perspectives we heard during our community outreach efforts, and an historical perspective of police-community relations in Kalamazoo, this Report provides a detailed narrative of the events of May 30-June 2 and August 15, 2020. Following those overviews, the Report turns to analysis of the events of May/June and August 15 across several relevant categories with a focus on comparison and contrast, and recommendations for going forward.

Methodology

To its credit, the City of Kalamazoo structured this Report project to ensure that a broad range of perspectives be considered in the development of findings and recommendations.

The actions of Public Safety were, of course, the central focus of this assessment, and KDPS was our main source of raw information across different categories, which we discuss below. But we also collected extensive information from other important stakeholders, including from the Kalamazoo community itself.

When it came to understanding community sentiments, valuable sources of input were the two virtual Listening Sessions which OIR Group hosted on January 11 and 25, 2021. We also listened to specific stakeholders, including advocacy groups, Kalamazoo's youth, and Neighborhood Associations. This public outreach also prompted a significant amount of additional correspondence from protest participants, onlookers, and the community at large.

See the "Community Input" section below for further details on these valuable sources of information and perspective.

Interviews with KDPS Sources

We met with several KDPS representatives who provided insight into Department operations, historical context, and the roles of special teams in May/June and on August 15. And KDPS hosted two virtual, informative briefing sessions for our team, each lasting well over three hours, where Command personnel presented a detailed account of the May/June and August 15 incidents from their perspective.

We appreciated these meetings and the individuals who participated in this review.

KDPS Documentary & Digital Evidence

At our request, KDPS provided very specific relevant documentary evidence related to the days of May 30 – June 2 and August 15.² The documents included:

- Command personnel’s detailed PowerPoint presented to the OIR Group team which included screenshots of social media, clips from radio broadcasts, body-worn camera, and media footage related to the incidents on May/June and August 15;
- Internal After-Action Reports for the Crowd Management Team from June 1, June 2, and August 15;
- Arrest reports related to both incidents;
- Operational material, including Operation Plans, related to the events of May/June and August 15;
- Incident Reports submitted by responding personnel related to the events of May/June and August 15, which also included accounts of uses of force;
- Complaint files received by KDPS related to the events of May/June and August 15;
- All relevant Department policies regarding uses of force, tactics, and First Amendment assemblies.

OIR Group team members also collected digital evidence from public sources, including both traditional and social media platforms, to better inform our review. OIR Group discovered digital evidence in personal and organizational Facebook and Instagram pages and Twitter feeds, and we reviewed streaming video footage from local media sources.

OIR Group also reviewed surveillance video footage from both KDPS and local businesses for August 15, radio broadcast communications for both May/June and August 15, and limited body-worn camera footage.

² In the “Self-Reflection” section of this Report, we detail our experience with the data request and receipt process which, in short, we found to be less collaborative and responsive than our past experiences with other law enforcement jurisdictions.

Evaluation of Body-Worn Camera Footage

Central to our understanding of what happened were the body-worn camera videos provided by KDPS. We reviewed hours of footage from officers deployed to various incidents, focusing on critical moments of KDPS deployment and incidents of particular community concern. While this was extremely helpful, we note here that the August 15 incident generated significantly more compliance with the Department's body-worn camera policy (and reviewable footage) than did the events from May 30 to June 2. We discuss this discrepancy (and related concerns) below in the Report.

Outreach to City Leadership

As part of our outreach, we spoke to the Mayor, City Commissioners, City Manager, City Attorney, and others who have leadership roles in the City Administration. All were gracious with their time and offered their perspectives of the events of the past summer and views on the challenges faced by KDPS, how it performed, and suggestions for improvement. We appreciated the views expressed by City leadership from their unique perspectives and the insights received were incorporated into our Report.

Community Input

A key element of our assignment was to engage with the Kalamazoo community and listen to voices from all perspectives. The goal was to gain insight into the events of both May/June and August 15 from participants and on-lookers, as well as to hear views on the KDPS response to those events from various segments of the community. There were several different aspects to our engagement effort. A central element was two listening sessions that were open to the public.³ Numerous speakers shared their views and observations in these sessions that were broadcast publicly.

We also conducted three additional, more targeted listening sessions with a group of Kalamazoo Neighborhood Associations, Kalamazoo's young people, and a collective of advocacy groups. Participants in each of these listening

³ Due to COVID-19 protocols, this and all other engagement efforts were conducted virtually, mainly via Zoom webinars, meetings, or telephone calls.

sessions had their own distinctive perspectives on the events over the summer of 2020 that were important to our understanding of the events and various responses from the police and City. We are grateful to City personnel, who provided invaluable technical support and other facilitation for our listening sessions and other engagement efforts.

The listening sessions and other outreach by the City prompted further engagement. We received more than 50 email messages from people wanting to express their views, many of which were long, detailed discussions that contained both opinions as well as historical context regarding the City and policing issues. Many also asked specific questions they hoped that this Report would address. We spoke with many of those who contacted us, conducting one-on-one interviews either via telephone or Zoom with more than 20 community members who had participated in or witnessed events that are the subject of this Report. Many people shared photographs and videos with us, depicting their experiences from last summer.

The views expressed to us throughout these various engagement efforts were diverse and wide-ranging. There certainly was no consensus on any single issue. People talked to us about their concerns with the police response to the events of May/June and August 15, but also provided commentaries on the performance of KDPS in other contexts and broader issues of race and policing. A significant number of people reached out to compliment KDPS and provide statements of support. Many people also talked about larger concerns with City leadership.

The following discussion is not intended to be a catalogue of everything that we heard from the Kalamazoo community, but rather a representative sample of the kinds of views expressed to us on various topics throughout our engagement efforts.

Community Input: Police Response to May/June Protests

Those in the Kalamazoo community who communicated with us in response to the events of May 30 - June 2 represented a range of perspectives – from protesters dismayed by the use of tear gas; to business owners grateful to KDPS for maintaining order and preventing widescale property damage; to longtime residents who watched events unfold and appreciated the extent to

which circumstances left KDPS with a difficult set of choices, and no perfect solutions.

Some representative comments – generally paraphrased – are evident of the wide spectrum of perspectives received:

- The National Guard presence seemed like an overreaction and an effort to suppress speech as much or more as to restore order.
- Those who defied the curfew did so consciously, to send the message that they were not going to be intimidated into abandoning their right to legitimate protest. The protesters knew they were breaking the law, but the “militarized response” was unwarranted and counterproductive. The crowd greatly resented being told that they were “creating a disturbance” by virtue of their extremely peaceful (to the point of kneeling on the ground) insistence on staying and demonstrating.
- Several people with whom we spoke felt strongly that the militarization of the police is hugely problematic.
- KDPS and other responding agencies used overly aggressive tactics, such as tear gas and less lethal impact weapons, on a largely peaceful crowd, especially on the late afternoon of June 2.
- KDPS tried to “trap” or “chase” protestors when some attempted to disperse.
- Looters and gang members took advantage of an already-tense situation and the veil of peaceful protest to commit acts of unrest and violence.
- Line-level officers deserved sympathy as people who were “just trying to do what they were told to do.”
- The murder of George Floyd, “by some truly terrible officers in a city 500 miles from Kalamazoo,” created an unduly harsh public opinion of KDPS officers, who were not involved in that incident, and of law enforcement personnel in general. KDPS did everything within their

power to keep peace within the City while dealing with this unfair categorization.

- KDPS and its officers were forced to make quick decisions in the face of violent situations that could have escalated in the absence of a controlled police response.
- KDPS did a good job in trying to maintain order in what was a tense time. They protected private parties and businesses in the City center while also listening and trying to respond to the protesters. Officers used restraint and responded professionally throughout this whole period.
- “Despite the righteousness of their cause, the curfew-defying protesters were recklessly irresponsible.” The curfew was necessary to confront real threats the City faced. The protesters had the opportunity to exercise their First Amendment rights “unmolested” before the curfew, but after the curfew they “illegally defied a reasonable” public safety measure.
- Protesters defied police orders and should have been charged and fined as consequences for their unlawful actions.
- People upset about police behavior never seem to have an answer for what should have been done. Should they have stood idly by and watched downtown be destroyed like other cities? If the police hadn’t responded when they did, “we might still be putting downtown back together.”

Community Input: Events of August 15

Comments about the events of August 15 were generally more critical of KDPS performance, but again, often were marked by recognition or perception that police had few good alternatives in the face of difficult circumstances.

- Even though the counter-protesters started the fighting, the police failed that day by not having a presence that could have prevented confrontation.

- The counter-protesters were the ones who incited violence, and KDPS officers responded to de-escalate the situation.
- Officers in riot gear pushed innocent bystanders and demonstrators toward the violent counter-protesters in a way that just increased hostility, after the Proud Boys were gone and the fighting was over.
- KDPS made illegal arrests of counter-protestors on August 15 while letting the Proud Boys' possible crimes, such as driving without license plates or assault, go unpunished.
- KDPS demonstrated incompetence when dealing with the Proud Boys. They stood by as Proud Boys sprayed counter-protesters with chemical compounds, and then provided safe haven by escorting them to a parking garage.
- KDPS provided a platform for this hate group.
- One resident commented that s/he was glad the KDPS got the "Proud Boy louts" out of town quickly.
- KDPS did not protect Kalamazoo from the Proud Boys but instead targeted the counter-protestors. One individual stated that when s/he saw the Proud Boys marching toward the park, s/he asked, "Where are the police?" When they finally saw a team of police in full riot gear enter the park, KDPS was not coming to protect those in the park from this group of "proud boys," but were coming after the people who were in the park.
- Some stated that even if one disagrees with the Proud Boys' philosophy, one still must respect their right to peacefully gather or peacefully protest. It is not up to KDPS to determine who can gather and protest.
- Some people commented on the fact that the Proud Boys did not have a permit for their march or gathering, while the group led by a local church leader in Arcadia Creek Festival Place did have a permit. They believed this should have led the police to shut down the Proud Boy gathering immediately.

- Some people cited a previous, similar event in which the KKK protested in Kalamazoo. They recalled that, for this event, the police maintained a large presence to keep the KKK and counter-protesters away from each other, and wondered why KDPS did not employ similar tactics for the Proud Boys event.
- Some people believe that a broader investigation into white supremacy within KDPS is warranted, based on a concern that they might have intentionally let the fighting happen because they are sympathetic to the Proud Boys.
- Hearing the KDPS explanation that they decided to hang back in August because of criticism about police response to the June protests reminded one commenter of the quote about generals “fighting the last war.” Police should have recognized the differences between the situation in August, where the fighting was completely predictable, versus earlier in the summer.
- Some people believed KDPS might have been sulking about the criticism they faced in June and so took the attitude with the August event of, essentially – “that’ll teach ‘em.”
- The Proud Boys did not start the fighting, and nothing would have happened if counter-protesters had kept their distance. The counter-protestors shouldn’t complain that the police didn’t protect them, when they were the ones who started the fight, and lost.
- The Proud Boys march would have failed if counter-protesters had just ignored them.
- The police could not win in this incident. One commented that KDPS were “damned if they did and damned if they didn’t.”
- “There is plenty not to like about the August 15 actions of the Proud Boys, their counter-protesters, and aspects of the police response. Yet, as with the June incidents, police actions should be judged considering the narrowed options left to them by others.”

Community Input: City Leadership

Many people commented to us about the effectiveness of City leadership through the events of last summer, citing broad concerns about transparency and accountability. Many commented that the summer's events, and the City's communication surrounding them in general, created a sense of deception or mistrust, and heightened a sense of "disconnect" between the community, public safety, and government. Specific comments on this subject frequently centered on concerns about the circumstances surrounding the departure of the then-Chief.

For all their distinctive experiences and opinions, all of those who reached out to us clearly shared a deep commitment to the City and a hope that the information they provided would assist in our efforts to provide a constructive report. This public input framed our detailed review of the events of the past summer and reinforced the impact of the City and Department's responses. The information provided helped us create a more complete picture of Kalamazoo in the summer of 2020 as it was experienced by the people most impacted.

Kalamazoo and KDPS: A Look Back

When we began our outreach in Kalamazoo, residents reported a historically challenged police-community relationship. One milestone that was cited repeatedly was a 2013 traffic study that determined that Black motorists were over two times as likely to be stopped by KDPS than white drivers, and the lack of diversity in KDPS personnel.

KDPS command personnel acknowledged this historical strain. While one executive described the 2013 study as “skewed” and questioned some of the methodology, he also said that the findings “smacked” KDPS into realizing that the agency needed to build trust and legitimacy with their community. At the time, the response by both the City leadership and KDPS showed a resolve to seriously consider the study’s findings. And positive changes did occur.

KDPS reported to us that, starting in 2015, the Department embraced the six pillars set out in President Obama’s 21st Century Policing model and the practice of community policing. And, indeed, the agency shared many commendable, on-going formal community programs, such as Pastors on Patrol, and street outreach, as well as informal block parties, reading programs, and ice cream socials.⁴

KDPS also takes pride in several more recent developments, such as:

- The development of the Crowd Management Team, a specially trained 18-person unit meant to manage (versus control) crowd situations, in 2018;
- A specialized Intelligence Unit to better liaison with other agencies established in 2019;

⁴ The Department noted that, unfortunately, many of these in-person programs had to be suspended in the past year and a half due to the COVID-19 pandemic.

- Their accreditation by the Michigan Association of Chiefs of Police⁵ and establishment of the Office of Community Relations, with a newly hired Community Collaborator and more robust Professional Standards Bureau, in 2020.

KDPS also cited the importance of training officers in implicit bias, de-escalation, and crisis intervention, reporting that their updated annual training schedule now requires these courses. City leadership commended KDPS's recent intentionality in diversity recruitment and hiring, citing a program that offers incentives for Kalamazoo locals.

While these developments are commendable, they often lacked a meaningful public outreach component and were not directly linked to addressing the 2013 study's findings and recommendations. This was in spite of the fact that a key recommendation of the study that KDPS regularly publicly report on the progress of its "cultural change initiative."

As a result, even though reforms were being undertaken by KDPS, many in Kalamazoo's community could rightly say that, as far as *they* were aware, no reform of any import emerged from that 2013 study or its aftermath. Instead, we heard a range of opinions about the ways in which KDPS is disconnected from its community, how its community relations efforts are inauthentic, and how limited understanding of diversity within the Department's ranks is problematic. Moreover, while there has been talk about undertaking another study to learn to what degree racial disparity continues to exist in KDPS' enforcement activity, the talk has remained a work in progress.⁶

In short, the Department's sense of its own progress in this arena has substantive merit, but nonetheless did not necessarily resonate with the wider community's experience. This suggests room for further efforts by KDPS to prioritize not only constructive change but also meaningful interaction with the public about those changes.

⁵ KDPS is one of only 35 law enforcement agencies in the state to receive this; acquiring accreditation required updating several policy and practice standards, which KDPS completed in late 2020.

⁶ Certainly the pandemic, and the months-long shut down of many optional activities, made 2020 not an ideal year to conduct such a study even if one had been authorized.

Overview of Events: May 30-June 2

As was true in many parts of the country, Kalamazoo proved to be the site of a range of events that were responsive to the murder of George Floyd in Minneapolis on Monday, May 25. News of that incident – as well as the cell phone video of Mr. Floyd’s anguished final minutes – circulated throughout the country and the world as the week progressed. It seemed to provide a tipping point after multiple recent incidents that magnified issues of racial injustice, police violence, and social inequity.

Beginning in Minneapolis, where the unrest had built by Thursday to the point that protesters burned down a police precinct station, demonstrations spread across the nation. The responses took many forms and were noteworthy for the sheer number of participants across generational and racial lines. Most of the activities were peaceful in nature, even if much of the messaging and underlying emotion reflected the widespread anger being directed at law enforcement.

But the dynamics in these nationwide demonstrations were complicated by currents other than those focused on solidarity with the Black Lives Matter movement. There were instances in which a small number of individuals within a peaceful protest event behaved aggressively toward law enforcement, to the point of engaging in assaultive behavior and damaging or destroying police vehicles. There were people who chose to express their outrage through acts of vandalism or destruction. And there were opportunists who saw the widespread social disruptions as a vulnerability to be exploited by looting.

Each of these elements was present to some extent in Kalamazoo over the days of civil unrest that began on Saturday, May 30. The challenge of addressing illegal fringe behavior – as was necessary and appropriate – without doing so at the expense of legitimate protest was beyond what KDPS had experienced as a Department. It resulted in moments of controversy as well as effectiveness.

Here we offer a summary of key events from those days. The intent is to provide a baseline frame of reference for later sections of the Report, in which

we analyze the various aspects of the KDPS responses through a lens of best practices, in comparison to the tactics and decision-making of August 15, and, ultimately, with an eye toward recommendations for strengthening future KDPS deployments.

Saturday, May 30

The protest movement began in Kalamazoo in earnest on Saturday, May 30. The first major event was a march that travelled from the County Courthouse to KDPS headquarters at mid-day and stopped there to commemorate George Floyd. Though no outreach from organizers had occurred, a KDPS command staff member reportedly made an effort to identify and talk with the group's leadership so as to facilitate their safe movement through the City. As Department officials later explained to us, that initial protest went off "without a hitch," and KDPS was focused on showing participants and the community that it respected the concerns that the Floyd incident had provoked.

A later protest that same day proved to be more challenging. The crowd was both larger and overtly less interested in coordinating or cooperating with KDPS officers who were attempting to guide their path through the downtown area. On the contrary, the behavior of some elements of this largely peaceful group reflected the antagonism toward law enforcement that was a recurrent source of tension across the country. The responsibility of crowd management becomes significantly more difficult for officers when their profession is itself the impetus for the demonstration. At different points in this second protest, KDPS vehicles and groups of officers were surrounded by protesters, some of whom were verbally hostile.⁷

The initial KDPS strategy was not to engage in a confrontation, and video shows several surrounded police cruisers carefully backing out of the marchers and leaving the scene. At a later point, though, another police

⁷ It should be noted that aggressive behavior toward the police was often "checked" by other protesters during this event as well as other episodes in the following days; there seemed to be a genuine as well as a strategic interest on the part of most protesters in remaining peaceful so as not to undermine their messaging. This self-monitoring was both helpful to law enforcement and a reminder that distinguishing between the behaviors within a large group was a necessary, if difficult, element of effective policing at the various demonstrations.

vehicle became encircled by a crowd that effectively trapped it in place, with some members verbally harassing the officers inside.

KDPS eventually made the decision to send its Crowd Management Team (CMT) of specially trained, specially equipped officers to create a diversion and extricate the officers who had been surrounded. The CMT deployed in two white vans, arrived at the scene, and created space within the crowd. KDPS noted that they deliberately chose to deploy its CMT personnel in “less militarized” equipment than some of their other available gear options.

While there was a measure of physical resistance from the crowd that precipitated a line of officers shoving them back with batons, and while at least one officer was spit on, that deployment was effective. All officers were removed to safety and re-positioned. Per the KDPS summary of the incident, the CMT was only involved for 13 minutes and left the area as soon as possible, again with an eye toward de-escalation.

There were no arrests and no reported injuries arising from that encounter, and the protest eventually dissipated peacefully. KDPS considered the day a success and was pleased with its own restrained response to the various activities.

Monday, June 1

The streets of Kalamazoo were relatively quiet on Sunday, May 31. But there was noteworthy activity in surrounding jurisdictions – some of which was concerning in terms of the severity of the unrest and the vandalism directed at police property.⁸ And the Department’s monitoring of social media revealed a number of posts that were relevant to the possibility of planned looting and rioting in Kalamazoo – criminal activity that had begun to proliferate in different jurisdictions as the ongoing unrest destabilized normal conditions.

With the possibility of these peripheral issues as a backdrop, KDPS was also preparing for planned demonstration activity on Monday that was consistent with the burgeoning protest movement. Several area churches planned events for within Kalamazoo and surrounding locations. KDPS put together a

⁸ Specifically, KDPS was aware of issues in Grand Rapids and Lansing that were troubling in this regard.

detailed operations plan that included extra staffing, designated several staging areas, incorporated Fire and EMS functions, and delineated supervisory responsibilities. The Crowd Management Team's various potential functions were described.

The church-sponsored protests attracted numerous participants and proceeded without incident. However, as the evening progressed – and while numerous protesters remained in the downtown area – additional factors began to create enforcement challenges. One of these was a large number of cars that came into the downtown area in a seemingly coordinated fashion, driving in a long line and simultaneously streaming their actions on social media.⁹ Several cars also drove toward the “Fashion Connection” on the outskirts of the City, where a recorded livestream showed several people attempting to shatter the glass entrance doors.

Shortly before 10:30 PM, a news crew recorded video of individuals apparently breaking windows at the County Courthouse downtown. Meanwhile, KDPS was learning about the first of two unrelated fatalities that would further strain its resources.¹⁰ It asked for additional mutual aid from outside the county at approximately 10:45 PM.

By 11:15 PM, KDPS had determined from its observations and intelligence-gathering that a large segment of the remaining individuals in cars and on the street intended to engage in looting and/or vandalism. It made the decision to begin initiating enforcement activity and started with the “target specific” arrest of a Black male who had a warrant and whom the Department had identified as a galvanizing figure in the unruly crowd.

This strategy backfired to some extent. Obviously unaware of the warrant, the crowd challenged the legitimacy of the arrest and were further incited by police efforts to overcome the man's resistance.¹¹ Instead of de-escalating the unrest

⁹ KDPS was monitoring some of this activity in real time.

¹⁰ These were a homicide that occurred at approximately 10:00 PM, and a fatal hit and run accident that occurred at approximately 11:30 PM, neither related to the protest activity but further straining KDPS resources.

¹¹ After a struggle to get him handcuffed, police had to drag him as “dead weight” to a vehicle when he went limp rather than walking.

through the efficient removal of a provocative crowd member, the arrest seemed to galvanize the crowd and added a new element of anger and aggression.

The next hours presented a range of enforcement challenges, as increasingly unruly behavior overlapped with the ongoing presence of a core group of protesters. KDPS documented multiple – and scattered – incidents of vandalism and property destruction. Several businesses on the Kalamazoo Mall were looted. And there were several examples of assaultive behavior directed at law enforcement, most commonly in the form of projectiles thrown at officers or vehicles.¹²

By midnight, the Crowd Management Team was moving from location to location in response to reports of active criminal conduct and, eventually, with the intention of dispersing individuals from the downtown area. Verbal commands to leave were largely ignored. The CMT used force in a variety of locations in an effort to effectuate the departure of the crowd. This included controlled pushes with batons and a variety of less lethal munitions including pepper ball projectiles and various chemical agents, including OC spray and, perhaps most controversially, tear gas.

A particularly stark and divisive deployment involved a group of some twenty protesters near the County Courthouse who approached a line of CMT officers, blocked the sidewalk, and eventually lay on the ground – at which point they were subjected to pepper ball munitions, OC sprays, and tear gas. These individuals got up and left at that point, but the visual – as captured by TV news cameras as well as social media postings – made a striking impression and raised a number of questions that we address later in this Report.

While the activity level gradually dissipated, individual acts of vandalism continued to occur. It was another three hours before KDPS felt it could bring its operation to a close for the night.

¹² KDPS also shared recorded examples of their mutual aid colleagues experiencing crowd hostility in different locations in the City.

Tuesday, June 2

While the streets had quieted by 3:30 AM on Tuesday, the aftermath of Monday night's activities dominated the City's agenda for that day. A number of protesters responded to KDPS headquarters ahead of a scheduled morning press conference; they were upset about some of the Department's uses of force and criticized the "militarized" riot gear and tactics of some officers. A narrative of excessive force against peaceful protesters quickly gained momentum.

Though the original plan had been to hold the press conference inside the building, without providing public access, the protesters attracted the attention of three City Commissioners who were at the location. They went outside to speak to the assembled protesters, and eventually prevailed upon the KDPS executives and other City leaders to go outside for their remarks.

It was there that the Chief described some of the toll from the previous evening's events. This included six arrests, an injured officer¹³, two damaged KDPS vehicles, three suspicious fires, and 25 downtown businesses that experienced vandalism and/or looting.

Significantly, she also announced two pro-active steps in response to "intelligence" about planned disruptive activities for later that day. One was the requested activation of National Guard troops to help secure the City; she said they had already arrived and would be deployed in perimeter locations to assist with potential crowd management and free up KDPS resources for their regular patrol responsibilities. The other was the imposition of a city-wide curfew, to begin at 7:00 PM and carry over into the next morning at 5:00 AM.

A KDPS command staff member also spoke. After condemning the police actions in the George Floyd case, he expressed his support for peaceful protest and offered details as to the various challenges that confronted KDPS in responding to Monday night's events. He described the strain on Department resources and the involvement of numerous outside "agitators" who engaged in dangerous driving activity and other illegal actions. He

¹³ This injury was a sprained ankle and not a direct result of thrown projectiles or assaultive protestor activity.

described his officers as being outnumbered “50 to 1” at one point and reported that rocks had been thrown at officers. He took responsibility for the Department’s responsive tactics and defended the use of less lethal munitions on the several prostrate individuals by characterizing them not as protestors but as recognized participants in the night’s illegal acts, whose apparent passive resistance was intentionally misleading.

KDPS command staff reiterated their encouragement of peaceful protests – several of which did occur in the ensuing daytime hours.

But by 5:00 PM, the National Guard had staged at 11 locations that ran along Michigan Avenue to the north, Park Street to the east, and Lovell Street to the south. The intent was to establish a “police zone” to restrict access and prevent the recently experienced unlawful behavior, rumored to be returning, from re-visiting the City.

As the 7:00 PM curfew approached, the Department’s attention was focused on a group of approximately 100 protesters who had assembled at the corner of Michigan Avenue and Park Street and eventually blocked the intersection. The KDPS Crowd Management Team was deployed and established a line of officers several yards from the mass of protesters. Michigan State Police officers on bicycles were also there in a mutual aid capacity.

The protest group was peaceful but willfully noncompliant, ignoring the formal dispersal orders and the announcements as the curfew deadline passed. Several minutes after 7:00 PM, a KDPS command staff member and the City Manager approached the protest group in an effort to show solidarity while urging cooperation. The KDPS command staff member in particular was impassioned in his efforts to connect with the group, but with limited exceptions was ultimately not successful. At one point he gave a countdown of sorts to alert the protesters that enforcement activity was imminent, but they remained in place.

At that point, KDPS deployed a grenade of inert gas (green smoke that was not incapacitating) in an effort to further impress its intentions upon the protest group. Most remained defiant, however; one individual even moved to toss the gas grenade back in the direction of the officers.

Soon thereafter, the KDPS command staff member and City Manager approached the line again, this time going so far as to “take a knee” as a

gesture of goodwill and solidarity. Again, though, the entreaties to clear the area as a matter of law and safety were largely ignored. At that point, the CMT deployed tear gas in a more active effort to disperse the crowd. The Michigan State Police officers assisted in crowd movement away from the downtown area, and a small number of arrests occurred.¹⁴

From there on, the night was largely uneventful, and the National Guard was released from duty by 11:00 PM. It also proved to be the last night of the City-wide curfew, which was lifted on Wednesday afternoon.

¹⁴ We heard accounts from some individuals that expressed concern over the actions of the State Police officers, including their force uses. But we did not receive any documented or detailed evidence about the MSP participation.

Overview of Events: August 15

On July 24, 2020, a post began circulating through social media platforms calling for members of the Proud Boys to attend a march on August 15. On July 27, posts called for the march to happen in downtown Kalamazoo at 2:00 PM. An individual who identified as a Proud Boys member said that the march was intended to support law enforcement and denounce Antifa.¹⁵ The Proud Boys did not seek or obtain a formal permit for this event.

KDPS learned of this event through social media posts, and a community member alerted the City Commission to the posts.

The potential arrival of an established hate group sparked controversy in Kalamazoo and throughout Michigan. Three groups began to organize counter protest activities. One of these, “Kalamazoo United for Peace,” was organized by a local church leader and known community activist. On August 6, this individual reserved the Arcadia Creek Festival Place (also referred to as the Arcadia Festival Site)¹⁶ through the formal Kalamazoo Downtown Partnership permitting process; the stated goal, was to prevent the Proud Boys from marching in this space by establishing a peaceful prayer vigil on the same



¹⁵ <https://wwmt.com/news/local/hate-group-plans-downtown-kalamazoo-rally>

¹⁶ The Arcadia Creek Festival Place had been, in Kalamazoo’s recent history, the home of approximately 30-50 houseless individuals. The church leader expressed concern that these individuals may be targets for the Proud Boys and believed that organizing a prayer vigil counter protest would help to protect the houseless from possible violence.

date and time. Two other groups reportedly also organized their members to counter protest.

On August 11, the City announced that it was canceling the annual Doo-Dah Parade, also scheduled for August 15, and rescinded the event's permit, citing both public health concerns related to the pandemic and that KDPS would not have sufficient resources available to adequately police the parade.

KDPS also planned and prepared for the event. KDPS personnel stated that they attempted to contact the Proud Boys to learn about their intentions, the march route, and other logistics. They were directed to speak to an attorney who formerly represented the Proud Boys but were unable to obtain any meaningful information. On August 13, KDPS held a pre-planning meeting with other City personnel, the Downtown Partnership,¹⁷ and the aforementioned church leader. In this meeting, KDPS reported that the church leader requested that KDPS not be visibly present at the event and, in a seeming contradiction, that KDPS also block entrances and exits to the Arcadia Creek Festival Place in case the Proud Boys attempted to enter that space. It is not clear to what extent KDPS based its planned operations on the church leader's desires, or whether the planning meeting merely confirmed a strategy KDPS was already developing. Regardless, KDPS leadership decided that personnel would stage out of sight, at a nearby location, and only respond if protesters became violent or damaged property.

As the date approached, both sides increased their social media rhetoric in the form of inflammatory language and calls for violence. Some local organizations, such as Lift Up Kalamazoo, specifically instructed their members to *not* attend the counter protest, fearing that it would not be safe for people of color. KDPS reported that they monitored these escalating exchanges, as well as noting the possibility for confrontation and violence between the Proud Boys and another white supremacist group, the Boogaloo Boys. In its Operations Plan, KDPS noted the real threats of violence and conflict.

At noon on August 15, KDPS held a briefing in the Kalamazoo Strategic Operations Center (KSOC), a command center located approximately two

¹⁷ The Kalamazoo Downtown Partnership is a public non-profit that works to facilitate collaboration between downtown entities.

miles outside of downtown Kalamazoo. The Operations Plan staged uniformed officer squads and the Crowd Management Team (CMT) out of sight, in various locations to the north, east, and west of the Arcadia Creek Festival Place. The stated mission was to restore order and effect arrests if conflict occurred. One strategy discussed was to contain any violence or unrest to the Arcadia Festival Site, with a plan to establish a police zone and enact road closures around the site, to prevent individuals from dispersing into downtown Kalamazoo. The plan also called for rooftop surveillance to observe and report on the event in real-time via radio. Shortly after the briefing, KDPS established a Command Post at KDPS headquarters and personnel deployed to their assigned locations.

Around this time, counter protest groups began to arrive at the Arcadia Festival Site. These included members from the church leader's congregation, and, to the church leader's reported surprise¹⁸, leaders and members of larger, more formal organizations, such as Detroit Will Breathe and the Michigan People's Defense League, a group that offers "community defense".¹⁹

While counter-protesters listened to music and speeches at the park's dome, members of the Michigan People's Defense League stood at the entrances to the Arcadia Creek Festival Place armed with long rifles. Upon seeing this open carry, KDPS deployed sniper officers to various rooftops, fearing that the event may escalate to an active shooter scenario.

Meanwhile, approximately 200 members of the Proud Boys had arrived in Kalamazoo and parked their vehicles in the Radisson Hotel parking lot,

¹⁸ While the church leader may have been surprised at some of the individuals who showed up, some with weapons, there is no indication that he advised them that they were not welcome at this peace rally.

¹⁹ KDPS also reported that a possible "Antifa," or "anti-fascist, anti-racist" group, Vigilant AFA, participated in the counter protest activity; KDPS found a flyer with possible Antifa symbology at the Arcadia Creek Festival Place. The church leader adamantly denied that he coordinated with these organizations and stated that he did not want these organizations to participate in his peaceful vigil. The church leader stated that he exchanged text messages with KDPS Command staff stating that the other groups were not part of his gathering. But KDPS later questioned this account and believed that there may have been collaboration.

located at Rose Street. At approximately 1:30 PM,²⁰ they began marching north on Rose Street, turned east to Water Street, and proceeded on Water Street in the roadway toward the Arcadia Creek Festival Place.²¹ A KDPS surveillance officer reported, via the radio, that the Proud Boys were moving toward the park and that a possible confrontation may occur at Eleanor and Water Streets at the southeast corner of the park.²²

At 1:31 PM, KDPS Command instructed personnel to “be prepared” to deploy but did not yet deploy any units.

As the Proud Boys marched, approximately 10-15 counter-protesters approached Water Street and walked alongside the march, yelling “our streets” as the Proud Boys flashed hand signs.²³ At one point, a counter-protester threw a paper drink cup into the marchers. Shortly thereafter, a male, later identified as a houseless individual who resided in the park, entered the middle of the Proud Boy march. Other counter-protesters followed him into the crowd of Proud Boys.

In response, at least one Proud Boy deployed pepper spray at the counter-protesters and others punched or pushed. Multiple fist fights began between Proud Boys and counter-protesters, some of whom were carrying sticks or poles.

The KDPS surveillance officer reported via radio that 20-30 people were fighting and that KDPS personnel “might need to move in.” At approximately 1:33 PM, Command instructed all squads to move in and gave authorization to use pepper spray as well as pepper balls, two types of less lethal munition.

²⁰ KDPS reported that they expected the Proud Boys to march at 2:00 PM. As such, they reported, they were caught off-guard by the earlier start time.

²¹ On August 15, there was construction scaffolding on the south side of the Water Street sidewalk which prevented the Proud Boys from walking on the sidewalk. Because of this, KDPS stated it allowed the Proud Boys to walk in the roadway.

²² A member of KDPS’ command staff drove an unmarked police vehicle behind the Proud Boy march.

²³ While the exact origins are debated, the Proud Boys, among other white nationalist groups, have appropriated the “ok” sign as a symbol of white supremacy.

Via a megaphone, a Proud Boys member instructed the marchers to “keep moving.” The Proud Boys march turned south onto Edwards Street. Several groups of counter-protesters followed.

Meanwhile, the KDPS teams that were staged north, east and west of the park began to move into the Arcadia Creek Festival Place. Via cell phone and then in person, a KDPS command staff member instructed the church leader to ask his congregants to leave the park because the event had turned violent. The church leader instructed the counter-protesters via his megaphone to not follow the Proud Boys and to go home. The KDPS commander pleaded with individuals, including the armed Michigan People’s Defense League, to leave.

As KDPS units arrived, KDPS began to issue orders that the Arcadia Creek Festival Place was now a “Police Zone” and that all must leave the area or face arrest (we define and discuss the police zone concept later in this Report). KDPS formed a loose skirmish line on Water Street. Some counter-protesters left but many stayed, questioning why they were being asked to leave, pointing out that the violence was over, and asking why KDPS officers had not arrived when the Proud Boys were marching, and fights were starting.

The KDPS commander again instructed the church leader to leave with his congregation. The church leader responded that his event was over and requested that KDPS “clear the park.” The KDPS commander agreed, stating that it was a police zone and that KDPS would clear the park. KDPS issued repeated instructions to leave the park in 10 minutes or face arrest.

Shortly thereafter, KDPS began to clear the park. KDPS arrested two individuals for violating the police zone.²⁴ At 1:59 PM, KDPS declared that Arcadia Creek Festival Place was safe and that most counter-protesters had left the area.

Meanwhile, the Proud Boys had turned onto Edwards Street and continued marching, followed by several counter-protesters. Fist fights erupted again between members of the two groups, and at least one Proud Boys member

²⁴ We discuss the issues with and controversy surrounding these and other arrests in detail later in this Report.

sprayed counter-protesters with pepper spray. While KDPS observed this from the surveillance post, no officers responded to this area.

The Proud Boys continued to the northeast corner of Bronson Park, where, around 1:45 PM, they converged and listened to speakers as counter-protesters shouted from the sidewalk and roadway.

Shortly thereafter, at least two KDPS police vehicles arrived at Bronson Park to effect a targeted arrest. While KDPS had identified the male as a counter-protester who previously had assaulted other individuals on Water Street, this fact was unknown to the crowd. Some counter-protesters became upset at what they perceived to be a sudden and unwarranted enforcement action; they argued with and attempted to obstruct the officers. The Proud Boys members cheered and chanted in support of the officers. Officers placed the male in the back of the police vehicle and left the area.

The Proud Boys departed from Bronson Park at 1:54 PM and made their way back to the Radisson Hotel.

KDPS reported that, at approximately 2:00 PM, they received a call from the Radisson Hotel management requesting that KDPS clear the hotel's parking lot, where most of the Proud Boys had parked their vehicles. The management requested that KDPS arrest anyone who refused to leave the parking lot for trespassing.

According to several reports from those involved, the counter-protesters learned that the Proud Boys were now at the Radisson Hotel and that KDPS was "letting" them leave. Angry, many walked from the Arcadia Festival Site toward the Radisson Hotel via Michigan Avenue, meeting others who had come from Bronson Park. KDPS officers moved in skirmish line formation along Michigan Avenue toward the Radisson Hotel's parking lot exit ramp, continuously announcing from the police vehicle that this area was now a police zone.

While the line was moving down Michigan Avenue, pushing the crowd ahead of it, counter-protesters continued to stop in the roadway. Officers attempted to detain an individual they had identified as an agitator, but he fled. As one officer chased him, another individual in the crowd struck that officer. This individual also ran from officers, who chased him and tackled him to the ground. Counter-protesters, reportedly unaware of why the officers had

tackled this individual, attempted to intervene. Officers used OC spray and pepper ball projectile munitions to disperse these counter-protesters.

Shortly after 2:00 PM, as Proud Boys members entered the parking garage, some counter-protesters attempted to engage them in fights. When cars began to exit, several counter-protesters threw rocks and other objects at vehicles as Proud Boys members yelled and flashed hand signals from open car windows. KDPS formed a skirmish line at the exit ramp between the Proud Boys' exiting vehicles and the counter protest crowd, facing the crowd.

Other KDPS officers arrested a man they observed throwing rocks at Proud Boys' vehicles.²⁵ At around 2:10 PM, KDPS also arrested a male counter-protester standing on the sidewalk next to the exit ramp holding a protest sign and, immediately after, a media reporter.

For about the next 40 minutes, officers continued moving through the Arcadia Festival Site, ordering people to go home but making no further arrests.

At approximately 2:50 PM, KDPS reported that Command asked for a status briefing on the crowd size. Via the radio, officers informed Command that people had mostly departed from the City's hot spots of the Radisson and Arcadia Festival Site. Command instructed all officers to return to their staging areas.

Later that evening, at approximately 7:30 PM, a small group of counter-protesters met at the exit gate to the KDPS headquarters. Several vehicles also arrived. At around 9:00 PM, counter-protesters eventually moved to Michigan Avenue between Rose Street and the Kalamazoo Mall, where they blocked the roadway and chanted "our streets" and "no justice, no peace." A group walked past a barricade that the City's Department of Public Services had placed earlier in the day along Michigan Avenue and yelled at Public Services employees who were managing the barricades, asking where these employees had been when the Proud Boys were marching. KDPS did not respond to this protest activity.

²⁵ KDPS also briefly detained a juvenile for throwing rocks at exiting vehicles, but he was released to his parents. As detailed elsewhere a "legal observer" was arrested by KDPS.

Operational Planning and Command Decision-Making

May/June: Strong Fundamentals, Effective Supervision – But Mixed Results

Whatever criticism KDPS engendered from the public for its responses to the protest activity in the May 30 to June 2 period, it was not the function of a lack of preparedness or clear planning. On the contrary, our review noted the detailed planning and organization that the Department often manifested in those days, as well as the coherence of its command structure as events unfolded. By virtue of its unique identity as an integrated public safety operation (encompassing fire and rescue as well as law enforcement), the KDPS familiarity with the fundamentals of the “Incident Command System” is particularly strong. This helped KDPS avoid common pitfalls related to autonomous police agencies: namely, a lack of coordination with other service providers within the City and a lack of clarity regarding supervision and decision-making.

As discussed later in the Report, some of the decision-making that did occur could be (and was) subject to legitimate questions in the aftermath of those days. But this is a different problem than the one that befell other jurisdictions during this time, which found themselves overwhelmed by the size and intensity of the unrest. Where many police agencies were notably unprepared, disorganized, and/or reactive, KDPS tracked developments effectively and deployed their resources thoughtfully over the course of these four days.²⁶ While some of this depends on variables not entirely within the control of the

²⁶ Department representatives were quick to credit the work of the agency’s analysts, who were tracking open- source social media and developing a significant amount of relevant intelligence.

given jurisdiction, KDPS deserves credit for many of its preparations during a demanding period.

We discuss these, as well as some of the related flaws, here – and use them as a foundation for comparison and contrast with planning for August 15.

On **Saturday**, the first day of the major protest activity, KDPS seemed determined to avoid making itself the issue. This is to its credit, given the extent to which anger and frustration *with law enforcement* had given rise to the demonstrations – a phenomenon to which KDPS appears to have been appropriately sensitive. In spite of not being contacted in advance by the earlier protest’s organizers, KDPS sought to make contact that day with relevant individuals in an effort to facilitate; this march proceeded peacefully and without incident.

KDPS also adapted well to the shifting dynamic in the later Saturday demonstration. Recognizing a different (and more hostile) energy in the ranks of this larger gathering, it chose to have its officers leave areas that were overtaken by marchers who were seemingly surrounding them.²⁷ Later, when two vehicles with patrol officers inside was indeed surrounded by the crowd, KDPS deployed its Crowd Management Team for the first time that day. It sent them out in unmarked white vans and in a reduced level of protective gear – for the express purpose of again minimizing any impression of aggressive tactics. Thirteen minutes later, with their objective completed, they were pulled from the field. There were no significant problems during the balance of the demonstration.

The KDPS “Operations Plan” for **Monday** was impressive in many respects.²⁸ It was primarily (and understandably) focused on the planned protests about which the Department had become aware and was quite comprehensive with regard to the relevant fundamentals. It established a clear mission, specified a chain of command, designated staging areas for both law enforcement and Fire/EMS to monitor the proceedings, put surveillance units in place,

²⁷ Importantly, the crowd of animated pedestrians was occupying downtown streets but not engaging in vandalism or other problematic behaviors.

²⁸ As we discuss elsewhere, one missing element in the KDPS Operations Plans’ was a robust discussion about how use of force was to be recorded, catalogued, and evaluated.

articulated five separate “Levels of Response” should crowd management become necessary, identified an arrest plan, and made appropriate references to radio protocols and mutual aid. In other words, it showed a sophisticated facility with the elements of an effective Operations Plan, and undoubtedly aided in readiness.

For all of its strengths, though, the plan also had limitations. It projected the possibility of unrest on to the planned protests (which turned out to be quite benign) while seemingly *not* anticipating or addressing the collateral, opportunistic criminal behavior (vandalism, looting) that had been rumored – or distinguishing between protest-related civil disobedience and blatant criminality. In this way, it foreshadowed one of the recurrent criticisms of KDPS that would follow: that, in its concerns about disorder and the potential for looting and property damage, it imposed a blanket enforcement strategy that failed to give appropriate space to the sincere (and primarily peaceful) protest movement as it unfolded on Monday and Tuesday. This constituted a change from Saturday’s successful strategy.

The plan for June 1 included a focus on Bronson Park with the following guidelines for implementation of the graduated “Levels of Response”: “The protestors will be giving [sic] an allowable amount of time to demonstrate including blocking of traffic, chanting, and yelling. Once the designated time frame has elapsed, KDPS will disperse the protester [sic] using city ordinance and state statutes.” Apart from the vagueness of the relevant time frames, the strategy seems oddly mixed between a deference to the protest movement and an underlying anticipation that police control (in the form of dispersal orders) would become necessary and appropriate.

Our understanding is that the planned protests did *not* end up implicating these concerns. The deterioration of safety conditions in the City on Monday night was instead the function of the car caravan and related outbreaks of criminality in the downtown area and elsewhere, events that gained momentum in the hours before and after midnight.

To its credit, KDPS adapted to these circumstances as the night unfolded, summoning help from off-duty personnel and outside agencies, and utilizing the Crowd Management Team to aid in responding to the various “hot spots” that arose. Communication, supervision, and leadership in the field appeared to be effective. And we recognize that Monday’s challenges were genuine.

The toll of damage was unusual for Kalamazoo. And if it was less extensive than in many other places, that could well have been a positive product of the KDPS response – and not necessarily an indication, as some voices subsequently argued – that the Department had overreacted.

Surely, the taxing experiences of Monday night influenced the planning for **Tuesday** that ensued. By late morning, even as protesters demanded explanation for some aspects of KDPS enforcement actions from the night before, City officials had decided to impose a curfew, and the National Guard had been summoned to assist. The City also designated a police zone per ordinance that would take effect later that evening and would restrict access to downtown areas that had been sensitive locations in earlier days of the unrest.

Among the documents we reviewed regarding the KDPS planned response was an aerial photograph that designated eleven different locations for National Guard deployment. This step – which proved controversial to some observers as a militarized overreaction – was intended to help address the strain on resources by helping with crowd management in a way that would allow normal patrol functions to proceed. The Guard units were used to establish and secure the perimeter of the Police Zone. Patrol officers were assigned to give curfew announcements between 5:00 and 7:00 PM at the different perimeter locations, and documented their activities.

Again, we found the KDPS planning – and subsequent enforcement – to be reflective of several attributes. The executive leadership was engaged, the command structure was clear and internally well-communicated, officers understood their roles and performed in a disciplined fashion, and the force that was used was graduated and directed by supervision. In our view, then, to the extent that the Department's performance fell short that night, it was not because of a *lack* of planning or consideration or failures of command and control. Instead, it was that the plan itself was rigid in ways that escalated the central conflict of the night, with unfortunate results.

This was, of course, the curfew enforcement clash that occurred at the intersection of Park Street and West Michigan and insertion of tear gas as a dispersal element. While the deployment of the National Guard and the Department's strict enforcement strategy did help avoid the destructive behavior of the previous night, it did so at a cost of public support and seeming heavy-handedness. The "curfew violators" in the intersection were indeed

technically breaking the law, but their protest and activity, at least at the time of the tear gas deployment, was much more in line with classic First Amendment expression than the dangerous disorder that had marred the previous evening. The Department's choice not to make that distinction was, in our view, unfortunate.

We discuss that encounter and our analysis of Department strategy in more detail below. But against the backdrop of the May-June planning and the KDPS strategies at that time, we look now at its approach to the pre-planned arrival of the Proud Boys and counter-protesters on August 15.

August 15: Questionable Planning Leads to Questionable Reactions

Planning for the August Proud Boys march was centered around an important lesson learned from June – the presence of police can act as a catalyst for confrontation and violence, particularly in a crowd protesting the impacts of policing in its community. Law enforcement agencies across the country learned this lesson during the demonstrations following the murder of George Floyd early in the summer, where crowd control officers in traditional “skirmish line” formations faced off against protesters displaying an unprecedented degree of hostility toward police. In some cities, as protests extended through the summer months, agencies’ approach to these demonstrations evolved, with many employing more low-key tactics, staging officers out of sight where they would not provoke confrontation but would remain available to intervene if necessary.

As noted above, KDPS showed a sensitivity to this “in real time” during the May 30 to June 2 operational period. Interestingly, they reacted in both directions – by deliberately, thoughtfully, and effectively showing restraint on May 30, and then imposing a pre-emptive show of resources that was designed to eliminate unrest on Tuesday June 2. The Department's experiences during those days, in conjunction with some of the public and official reaction, played a role in its subsequent deployment strategies, particularly when pre-planning was possible.

On July 11, a planned protest shut down streets in downtown Kalamazoo, as hundreds of marchers gathered in Bronson Park to call attention to systemic

racial injustices and demand an end to police brutality. The event featured a former NBA player and childhood friend of George Floyd. KDPS worked with organizers prior to the march to avoid confrontation and ensure a safe, orderly event. The Department agreed to avoid a police presence, keeping officers staged two blocks away and out of view, but provided low-key traffic control to accommodate protesters' plan to walk in the middle of the roadway. By all accounts, the march was a successful, peaceful demonstration.

But the August 15 event was distinct from the June and July demonstrations in critical ways. Rather than a gathering of individuals demonstrating in support of a cause or protesting police violence, the August event was from the very beginning understood to be a march by a group with a history of antagonizing counter-protesters and instigating violence, whose ideology was highly offensive to those who had been engaged in the earlier summer protests. Indeed, the counter-protesters materialized shortly after the Proud Boys announced their Kalamazoo rally via social media. According to the Operations Plan prepared by KDPS in advance of the march, three different organizations were expected to be counter-protesting. One of these was a group organized by a local church leader who became a focal point of KDPS's planning efforts and later post-event reporting. The Operations Plan contains little intelligence on the other two groups organizing counter-protests, and KDPS produced no additional specific intelligence on these two groups.

Despite the church leader's representations that he intended to hold a peaceful prayer vigil, KDPS claimed in its Operations Plan that he had made social media posts "instilling hate" and "attempting to get a rise out of people". The Operations Plan also stated, "*social media posts are calling for 'blood' and to throw 'objects' at the 'Proud Boys.' Considering previous acts, these threats are being taken very seriously.*"

The Operations Plan then lays out the plan for staging uniformed officers and Crowd Management Team squads "outside of the area and out of sight" and states, "*In the event that the protests become violent, riotous or damage to property occurs crowd management techniques will be implemented.*"

We are not the first to note the inconsistency between the pre-event intelligence gathering, with its expectation of violence and fighting, and the plan to stay out of sight and engage *only if* violence erupts. KDPS has offered several explanations for this apparent disconnect, including concern that

establishing a police presence would make the police a focal point of the protest and provoke confrontation; concern that a police presence would be characterized as KDPS siding with or protecting the Proud Boys; and the church leader's desire to not have KDPS present unless violence broke out.

None of these explanations aligns with best practices for crowd management. It is impossible to say, of course, that KDPS would not have become a focal point for anger had it staged officers in between the Proud Boys and counter-protesters but given the high degree of predictability of violence erupting without a police presence, the KDPS rationale for keeping its distance does not withstand scrutiny.

The point of the counter-protest was to push back against the Proud Boys and their white supremacist ideology, a different emphasis than the earlier George Floyd, Black Lives Matter demonstrations. While we understand KDPS's concerns about the possibility of their presence being misconstrued as alliance with the Proud Boys,²⁹ their mismanagement of the event ended up creating the very impression they sought to avoid in ways that also should have been predictable.

Another reason KDPS gave for its decision to stage officers away from the competing demonstrations was the church leader's desire for this strategy. While sensitivity and responsiveness to community concerns is commendable, this level of deference to an event organizer is ill-advised, particularly in these circumstances, where ceding to the pastor's wishes meant disregarding credible threats of violence.

The KDPS post-August 15 briefing emphasizes the extent to which the agency believes it was "tricked" by the pastor. It noted the church leader said he would be holding a peaceful prayer vigil, that there would be no outside sources at the demonstration, and that he and his followers would leave if violence occurred. The sense of deception conveyed by KDPS is puzzling, since its own Operations Plan cited what it considered to be inciteful social media posts by the pastor, as well as the involvement of at least two other

²⁹ The Proud Boys routinely endeavor to align themselves with law enforcement, denounce the "Black Lives Matter" movement, and frequently chant "Blue Lives Matter" while carrying the "thin blue line" flag that is commonly identified with support of and appreciation for the police.

groups associated with the counter-protest effort. The effort to subscribe blame to the church leader also assumes he had a greater measure of control over who might come to downtown Kalamazoo to oppose the Proud Boys and how they might behave than it was fair or reasonable to assume. It also ignores social media posts cited in its own intelligence that identified the Proud Boys as “experts at instigating violence.” Reliance on the church leader’s representation that he would and could maintain peace in the face of these circumstances was naïve, at best.

Better practice would have been for KDPS to rely on its own preparations and intelligence briefings to establish its plan for managing the competing demonstrations, mindful of – but not dictated by – organizer and community concerns. Where law enforcement has information that violent conflict is likely to occur in public spaces, it should develop a strategy aimed at preventing that violence. Of course, there is no guarantee that a KDPS presence would have thwarted clashes between the Proud Boys and counter-protesters, but the absence of law enforcement at the scene virtually guaranteed the fight would start.

The decision to stay out of the fray conveys a sense of helplessness that was not warranted. KDPS talked of its efforts to reach out to the Proud Boys prior to August 15, but no attempts were made that day to interact with Proud Boy organizers, to learn their intended route or convey KDPS expectations. Best practice would have been for KDPS to establish its presence at the Arcadia Festival Site and surrounding streets early in the day, before the groups arrived. As the groups coalesced, KDPS could have met with their leaders to, first and foremost, reassure them that everyone’s free speech and assembly rights would be respected and protected, but also to convey the “ground rules” and expectations.³⁰ While the police are truly never “in control” of these potentially volatile situations, projecting a sense of confidence that law enforcement is actively managing the setting can go a long way toward maintaining order.

Beyond that, it also would have useful for KDPS to have a better understanding of the Proud Boys’ intended route, for purposes of traffic

³⁰ We noted that KDPS leaders made this type of effort on May 30, meeting with march organizers who came from outside Kalamazoo at the beginning of their demonstration to discuss the march route and other logistics.

control, and the intent of the other counter-protest groups present. KDPS made an assumption that everyone who ended up at the Arcadia Festival Site was associated with the church leader, since he had obtained a permit to reserve the site. He denies that he had invited these outside groups, including the armed Michigan Defense League, or that he had any control over their activities. If KDPS had been visibly present in the park prior to the march, meeting with counter-protest leaders, officers could have gathered their own intelligence about these groups' intentions and, again, established expectations for boundaries and conduct. Instead, they surveilled from a distance, and reported dismay at the fact the church leader was seen interacting with these groups prior to the Proud Boys' arrival.

The presentation KDPS shared with us and others in the City focused a great deal on the church leader's role, but we see the effort to blame him for the way events unfolded as overly simplistic, and at times even unfair. The pastor undoubtedly figured prominently in both the preparations for and enforcement responses to August 15. But the KDPS presentation focused on certain bits of his speech and social media posts to paint him in a negative light. For example, in a recorded speech made at the Arcadia Festival Site prior to Proud Boys' arrival, the church leader said:

So all I ask is that for the remainder of this afternoon you commit yourselves ... to the way of nonviolence and nonaggression. Ok, now let's work together to remain peaceful ... to take care of each other, to take care of our own selves and our own safety, and to defend one another other. Amen? Let that be our watchword – defend ourselves. ... Stay safe, and do not pick fights.

The notation from the KDPS presentation regarding this video is "Pastor [...] gives his speech and mentions defending one another."

The church leader certainly played a central role throughout the events of August 15, from the planning through the unfolding of the day's events. But the KDPS effort to assign responsibility to him for much of what went wrong that day assumes he had more control than should reasonably have been expected, while also failing to acknowledge the Department's responsibility for operational planning and control issues. And even if one accepts (which we do not) the KDPS narrative that what went awry is the fault of one individual in

Kalamazoo, it was the Department that gave this person an outsized say in how public safety would respond that day. As we say repeatedly throughout this Report and discuss in detail in the “Self-Reflection” section, we encourage the Department to undertake a more introspective review of its own decision-making, weighing alternative viewpoints as it looks for learning opportunities.

Arrests & Enforcement

Over the course of the individual days in May, June and August that we cover here, we are aware of a relatively small number of reported arrests by KDPS. Six of these occurred on the night of the most significant unrest (June 1 into June 2) and included charges such as burglary, malicious destruction of property, and assaulting/resisting the police. Ten individuals were arrested on the evening of June 2, for curfew violations and other misconduct. Finally, and perhaps most notoriously, there were nine arrests on August 15. These incidents, though fewer than what occurred in many other jurisdictions during comparable demonstrations and disturbances, nonetheless attracted significant attention and reflected – in varying ways – on KDPS decision-making.

The August arrests were particularly controversial in light of some of their particulars –including the seeming focus on counter-protesters, the lack of any apparent accountability for Proud Boy participants in the different conflicts, and the inclusion of both a media member and a legal observer, representatives of two categories that are generally given more leeway in a crowd control context, such as being in a Police Zone. Several counter-protestors were arrested for both assaultive conduct and violations of seemingly “minor” municipal codes, while the Proud Boys were allowed to leave Kalamazoo without a single arrest or even traffic citation, despite what the community perceived to be illegal conduct on their part. When the majority of these arrests against counter-protestors or observers were eventually dismissed (as were the June curfew charges), the community became even more certain that KDPS had been “wrong” in their selective (and, the community opined, even racially disparate) enforcement.

The reality is more complicated than the harshest of these criticisms would suggest. But the fact that the Department often had technical justification and/or reasonable explanations for its actions does not mean that its exercise of discretion was best attuned to community sensibilities or the prevailing circumstances. Moreover, the poor communication that often accompanied or followed those actions further contributed to the narrative that KDPS had aligned with the “wrong” side.

But as we discuss in detail in this section, the arrests were, on legal grounds, legitimate (though in some cases inadvisable). Some arrests, particularly those for assaultive behavior and those from May/June, were used by KDPS in a strategic and selective manner; in our reviews of other jurisdictions, we often suggest that agencies attempt these targeted, strategic arrest protocols in crowd management to remove the violent element from an otherwise peaceful protest. In fact, and perhaps ironically, there are places where the better practice may well have been to *conduct* targeted arrests rather than have particular standoffs devolve into uses of force in order to disperse protesters who were not directly involved in assaultive conduct.

As we discuss here and throughout this Report, KDPS missed an opportunity with its public to clearly communicate intentions, strategy, and evidence regarding arrests.

Analysis of May / June Arrests

The decision whether to arrest when there is legal authority to do so is, of course, often very straightforward. But there are also many instances when judgment calls and surrounding circumstances can lead to varied results – and provoke varied opinions as to their propriety. We recognize that hindsight, which KDPS did not have the luxury of, is always an easier vantage point for evaluation. Nonetheless, we look at a few different turning points during the June 1 and 2 sequence of events in which different approaches to arrest may well have been beneficial.

The first of these was the arrest of a Black man at approximately 11:15 PM on Monday, June 1. This individual had attracted KDPS attention as the result of his social media posts, and they believed him to be a significant instigator of some of the unruly behavior into which the night was devolving. According to KDPS, he also had felony warrants for his arrest.³¹

The arrest did not go well. The man was standing on a sidewalk with friends – and not then engaged in overtly criminal behavior. So there was confusion and then anger when police insisted on taking him into custody – a process

³¹ KDPS obviously had every right to arrest this individual as a result of the outstanding warrant. We are less clear as to why KDPS specifically decided to arrest him at that specific moment, as we did not receive a copy of his arrest report.

that ended up involving considerable struggle and attracting considerable attention from a concerned, angry crowd of observers.

The strategy of “targeted” arrests in a crowd management situation can be very effective. It directs the limited resources of the agency toward individuals whose removal from the scene is justified by their aggressive, assaultive, or otherwise distinctive behavior, and thereby has the potential to lower the overall conflict levels. Moreover, unlike the introduction of tear gas as a dispersal agent, the individuals responsible for assaultive conduct are the sole focus of the enforcement activity. Here, though, the main KDPS’s basis for taking action was peripheral to what was unfolding in real time in the streets – and was therefore less advisable in terms of how it appeared to protestors who witnessed the arrest and how it influenced the dynamics of the unrest. In fact, critics subsequently claimed that this seemingly unprovoked police enforcement action on a Black male member of the public overtly changed the environment for the worse and spurred some of the destructive backlash that followed.

RECOMMENDATION 1

In determining arrest strategies in a crowd control management context, KDPS should focus on contemporaneous misconduct such as assaultive and/or destructive behavior, rather than other potential justifications such as outstanding arrest warrants.

Another issue with arrest decision-making from Monday night into Tuesday came from the other direction – namely that KDPS (and the situation) may have been better served by arresting *more* of the individuals who participated in the looting and other criminal behavior that marred the night’s events. A significant amount of evidence – including video – corroborates the KDPS contention that looting and vandalism were occurring downtown and in other parts of the City. But the small number of related arrests raised questions by some about the veracity of those claims.³²

³² Similarly, the Department’s contention that “outsiders” intent on causing problems – as opposed to protestors from Kalamazoo proper – were largely responsible for Monday night’s unrest was seemingly belied by the fact that most of the night’s arrests involved Kalamazoo residents.

KDPS maintained that its choices in this arena were limited by the strain on resources created by the multi-faceted unrest. We appreciate the legitimacy of this argument, and note the additional challenge posed by the two unrelated fatalities in Kalamazoo to which police responded that night. The choice to keep officers available in the field rather than consuming them with arrest and custody procedures seems to have been a reasonable one – at least as a basic approach in conjunction with the prioritizing of dispersal and the ability to respond to specific areas where behavior was particularly problematic.

Still, as the night progressed into morning, and more resources became available in the form of mutual aid, additional arrests aimed at flagrant offenders would have been beneficial and perhaps should have been more centered as a strategy.³³ Positive effects could have included accountability for those whom KDPS later blamed for the problems and deterrence of others. And it may well have helped to offset the subsequent perception that KDPS had exaggerated or overreacted to the unrest that did occur and had done so at the expense of legitimate First Amendment protesters.

Any struggles that KDPS might have experienced in this arena were certainly not unique to Kalamazoo, and many agencies were left in the frustrating position of criticism for doing both too much and not enough. This was especially true in communities around the country where looting and property damage were as or more disturbing to residents than law enforcement's crowd control techniques proved to be. KDPS avoided some of the extremes that befell other jurisdictions in these categories and deserves credit accordingly. But this is an arena for which, like others we note throughout this Report, there appears to be room for further consideration, "lessons learned," and future adjustment.

³³One example would be the group of individuals whom the Department ended up subjecting to chemical munitions as they lay on the ground in front of the Courthouse after midnight on Tuesday morning. KDPS asserts that it had identified these individuals as people whom they had attempted to disperse from the area on several occasions, and who had repeatedly circled back and thrown objects at the officers in the area. In part because of limited resources, the CMT members dispersed them with gas rather than effecting an arrest. We discuss this choice in the "Use of Force" section of the report, below.

RECOMMENDATION 2

KDPS should work with City officials and community representatives to assess its strategy for addressing criminal misconduct in the context of larger scale unrest, so that those responsible for assaultive and criminal conduct are targeted and those who are exercising their First Amendment rights are not impacted by less selective approaches such as tear gas.

Lastly, we turn our attention to the curfew standoff on Tuesday night. The protesters who were blocking the intersection and remaining in place after 7:00 PM were clearly aware that they were in violation of the law. But several features of the ensuing encounter with police were noteworthy to us.

One of these was that this group was clearly and exclusively intending to protest in a peaceful (if technically unlawful) way. Unlike Monday, which we acknowledge was complex, widespread, and often aggressive in its particulars, the streets of downtown Kalamazoo were largely quiet on Tuesday evening. The National Guard (and other agencies) had established a perimeter and made themselves available to assist, and the demonstration at the intersection was contained.

In our view, some of the initial on-scene efforts of the KDPS command staff member and the City Manager were commendable. Their desire for the confrontation to end peacefully was obvious, and the command staff member's heartfelt expressions of solidarity were particularly resonant. However, these were accompanied by a larger sense of rigidity that was perhaps misplaced. We touch on this elsewhere but take this opportunity to focus on the arrest option that was not chosen: namely, the controlled (or even collaborative) arrests of a group of people who were choosing nonviolent civil disobedience in keeping with a classic tradition.

Based on what can be gleaned from the available video, and in later conversation with participants, there were members of the crowd who attended the protest with the *expectation* of being arrested as part of a statement in support of racial justice and rejection of the legitimacy of the previous day's enforcement activity. A discussion by KDPS leadership with group members along these lines may well have led to successful negotiation and a resolution of the issue that was peaceful and effective: the "statement" arrests of all or part of the participants. Instead, KDPS's approach was

significantly less flexible – from the ill-advised “countdown” that escalated matters artificially soon after 7:00 PM to the use of chemicals and officer movement as a forced dispersal technique.

What *might* have happened with a different approach is obviously speculative, and subject to variables (like crowd cooperation) that KDPS did not completely control. Such arrests may well have engendered other types of criticism or led to struggles such as the one the previous evening if some crowd members were uncooperative. We also reiterate our recognition that decision-making in the moment is more difficult than after-the-fact evaluation. But we do not have the sense that KDPS itself has committed to an introspective review that might produce some of these same observations, weighing of alternatives, and learning opportunities. We encourage it to do so.

RECOMMENDATION 3

KDPS and the City should examine its tactics in engaging with the curfew protest group on Tuesday evening, and consider the applicability of coordinated arrests as a potential alternative tool to chemical munitions.

Analysis of August 15 Arrests

The nine arrests KDPS made on August 15 fall into two general categories – four made for assaultive or violent conduct (including one for assaulting an officer and one for throwing rocks at departing Proud Boy vehicles), and five others for nonviolent but obstructive behavior (defying a police zone, impeding traffic, or attempting to obstruct or resist an officer). While KDPS points to legal justification for all of these, the fact that only counter-protesters were arrested fueled the perception of preferential treatment for the Proud Boys.

With respect to the first category of arrests, the police reports, body-worn camera footage, and overhead surveillance video support the KDPS view that some counter-protesters initiated the aggression by moving into the group of Proud Boys, making physical contact that ignited a larger fight. At the outset, two individuals were characterized by KDPS surveillance officers as being the “main catalysts” for the fighting. KDPS surveillance effectively tracked these individuals and directed officers to their locations, where officers arrested them for felonious assault and inciting a riot. As we previously noted, these enforcement actions, like the one that occurred in June, were a shock to the

counter-protest crowd who did not know the larger context of the arrests. The crowd responded in understandable anger, fueled in part by the fact that “their” members were being arrested while none in the Proud Boys camp were detained. Optics aside, we commend KDPS’ swift action to enforce in this target-specific manner to remove these particular individuals from the street, as video shows their conduct to be inciting violence.

After speaking to onlookers and also reviewing evidence, such as police reports and video footage from KDPS, we noted that there is mis-alignment between what the community saw and the evidence. This may be less a problem of either side having the facts wrong as it is further evidence of KDPS’s failed communication efforts and a potential disconnect between the Department and the Kalamazoo community, which we discuss in detail later in this Report.

KDPS Arrests by Charge: August 15, 2020

CHARGE	COUNT
Felonious assault	2
Inciting a Riot	3
MDP	2
Resisting & Obstructing	1
Attempt Resisting & Obstructing	1
Impeding Traffic	3
Violating a Police Zone	2
TOTAL*	13

** The total reflects offenses charged, not individuals arrested. A total of nine individuals were arrested on 13 separate offenses.*

KDPS’s post-event emphasis on the story line that the counter-protesters were the aggressors misses the bigger point of the conflict in the context of last summer’s political and racial polarization. One of those arrested for violent conduct expressed this view well, as he repeatedly shouted, “But they came to us!” as he was being handcuffed and led away. And as officers detained a Black man (one of those deemed a “catalyst” for the initial violence), the Proud Boys cheered and chanted, “Blue Lives Matter!”

We are not suggesting these arrests were unjustified, but KDPS’s rigidity in insisting on the factual correctness of the charges without acknowledging how the community perceived the situation permitted the anger surrounding the entire event to continue and grow.

We are also in no way intimating that the City or KDPS could or should have prevented the Proud Boys from coming to Kalamazoo or otherwise should have infringed on the group’s First Amendment rights. But by not taking a step

back in self-reflection to acknowledge the community's point of view, KDPS enabled proliferation of the narrative that the police objective that day was to protect the Proud Boys.

In the larger evaluation of the day's events, who threw the first punch matters little. Many on both sides were spoiling for a fight and given all the circumstances – including the Proud Boys' penchant for provoking outrage amidst a community still hurting from the murder of George Floyd and struggling with an awakened sense of the impact of systemic racism – the violence between the two adversaries was in many ways a foregone conclusion.

And while it may be easier for us, as outsiders, to put things in perspective, all should recognize that outcomes that day could have been much worse. Attendees were armed with rifles, handguns, and bear spray. People also brought hatred, anger, and other intense emotions to the stand off. It may be small solace for those in Kalamazoo who suffered the effects of pepper spray or had lacerations closed with sutures, but a fair evaluation of this event should acknowledge that no one fired a weapon, and no one was seriously injured, or worse.

The other category of arrests – five individuals taken into custody for nonviolent charges of impeding traffic, violating a police zone, and attempted resisting and obstructing – also helped to perpetuate community views that the police sided with the Proud Boys.

Two of these arrests were made at the Arcadia Festival Site as KDPS began enforcing the police zone; some individuals were not following orders to leave while others were arguing with officers and questioning the orders.³⁴ Three others were arrested near the Radisson Hotel's parking lot exit ramp as people were confronting the Proud Boys as they departed and, again, challenging the police dispersal orders.

As with the first category of arrests, KDPS's reliance on the technical "correctness" and legality of officers' actions did not align with the experiences and perceptions of the Kalamazoo community. The arrests of counter-

³⁴ We discuss the decision making behind imposition and enforcement of police zones later in this Report.

protesters at the Arcadia Festival Site while Proud Boys rallied in Bronson Park, and later arrests at the Radisson as Proud Boys drove away, understandably stoked community anger around KDPS's handling of this event.

Part of this community resentment stemmed from enforcement, or lack thereof, of municipal codes related to impeding traffic. The Proud Boys, who had not sought a permit or made any efforts to coordinate with KDPS, were allowed to march down the middle of Water Street, blocking traffic. Conversely, three counter-protesters were cited for impeding traffic. When asked about this apparent contradiction in their enforcement, KDPS responded that, foremost, its practice is to accommodate non-permitted demonstrations in the interests of protecting First Amendment rights. Further, they stated, on August 15, the sidewalk on the south side of Water Street was closed for construction, so the Proud Boys had no choice but to march in the roadway, impeding traffic. KDPS explained that the later arrests for impeding traffic were made because those individuals were blocking cars exiting private property in an area that had been declared a police zone. These were, in their opinion, notable differences that warranted different enforcement responses.

Another common concern raised by the community is that the Proud Boys were not cited for driving vehicles that did not have proper license plates. KDPS responded that enforcement of those types of vehicle citations had been suspended during the pandemic. And, more importantly, the goal was to get the Proud Boys out of town as quickly as possible. Pulling cars over to issue traffic tickets would only have delayed their exit and created the opportunity for further confrontation and conflict.

These explanations make sense. Nonetheless, the seemingly selective enforcement targeting counter-protesters continues to anger many in Kalamazoo, who see it as evidence that KDPS is worryingly aligned with the ideology of the Proud Boys. As we have observed throughout this Report, this likely points more to KDPS's flawed post-event communication strategy than to any substantive decision-making.

Despite finding that KDPS's explanations make logical sense and were, on face value, warranted, we find it imperative to address two of the more controversial arrests that raised particular concerns.

First, a clearly-identified legal observer (wearing a bright green hat signifying his status) was arrested for violating the police zone at Arcadia Festival Site. Second, a media reporter was arrested for attempting to restrict or obstruct officers near the Radisson parking ramp. The media reporter was equipped with his media credentials and a backpack with the logo of the media entity with which he was associated. Both were handcuffed and transported to jail.

During a press event held the next day, the Chief apologized for the arrest of the media reporter.³⁵ She indicated that the reporter was wearing a media credential and never should have been arrested. KDPS did not provide an apology or any public explanation for the arrest of the legal observer.

After the incident, the City and KDPS worked on a number of changes, including a proposal to provide training for officers regarding members of the press and legal observers during First Amendment assemblies. KDPS also suggested training for journalists and discussions of media credentials with reporters to ensure they properly identified themselves as members of the media when covering protests and other events in Kalamazoo.³⁶

Certainly, members of the media and legal observers should not be completely “exempt” from following police orders when attending or covering protests. But their special status does suggest that police make different considerations prior to detaining these individuals for nonviolent offenses such as violating police instructions or being in a “police zone”. Officers should consult on-scene supervisors prior to detaining or arresting reporters or official observers. If officers do detain a journalist or legal observer prior to consulting a supervisor, a field supervisor should be required to authorize any formal arrest and transport to County jail. Finally, supervisors should be trained on the special role of journalists and legal observers and all factors to consider in exercising discretion on whether detention and/or arrest of such individuals is an appropriate exercise of that discretion.

³⁵ Since and despite that apology, we have been advised by some at KDPS that there was nothing inherently wrong with the arrest of the reporter.

³⁶ It is curious that part of the “fix” advanced by KDPS was to discuss credentialing with the media since the arrested journalist was acknowledged to be properly credentialed and identified.

RECOMMENDATION 4

KDPS should modify its policy to ensure that field supervisors are consulted before officers arrest or detain journalists or legal observers for violations of police zones, curfews, or other nonviolent offenses in the context of protests or demonstrations.

RECOMMENDATION 5

KDPS should provide training to supervisors on the need to exercise discretion prior to approving arrests of journalists and legal observers for nonviolent offenses in the context of them covering protests or demonstrations.

With one exception, the Kalamazoo County Prosecuting Attorney's Office declined to file charges against any of the other individuals arrested on August 15. Prosecutors cited various reasons for these declinations, but they all seemed consistent with a general position not to charge protesters with obstruction or prosecute violations of police zone orders stemming from that event. The one prosecution advanced was against the individual who had assaulted a KDPS officer. He was charged with felony Restricting or Obstructing an officer (and ultimately pled guilty to a misdemeanor charge of attempted assault).

In the course of our review of arrest reports and prosecutorial decisions, we found that one arrest took notable "turns" through KDPS and the City's system. We detail this here not to question the arrest, but rather to highlight a concern in KDPS's internal complaint system.

The individual was initially arrested for felonious assault and inciting a riot. The prosecutor declined to file on these charges because no specific victim of the assault had been identified or located, and insufficient evidence had been submitted for the inciting a riot charge.

Three days later, a lieutenant assigned to the Office of Professional Standards interviewed this individual regarding his complaint against officers for conducting a false arrest. The lieutenant interviewed the complainant again the following day. The individual decided not to pursue his complaint after being confronted with the reality of the video evidence.

But, curiously, following the *complaint* interview, the lieutenant forwarded the information generated as a result of the complaint being filed to KDPS' Criminal Investigations Division which then sought a new potential charge for carrying a dangerous weapon with unlawful intent which was submitted to the Prosecuting Attorney's Office for review. The prosecutor again declined to file charges, opining that the weapon (a stick) did not meet the legal definition for dangerousness.

The process for receiving and investigating allegations of misconduct by officers should be separate from any investigation of criminal wrongdoing by those making the allegations. KDPS, using information gained as a result of a visit from a complainant to then support a request that an additional charge being filed on that complainant – is inappropriate and should be prohibited. A public complaint process should exist to enhance public trust in a law enforcement agency by assuring the community that allegations of misconduct will be taken seriously. Turning that process into support for criminal charges against the complainant undermines public confidence, discourages future complainants, and diminishes the agency's role as a community service organization.

RECOMMENDATION 6

KDPS should develop policy or protocol prohibiting the Office of Professional Standards personnel from submitting reports in support of prosecution based on their investigation of public complaints of misconduct made against officers or other KDPS personnel.

Crowd Management Concepts

Nationwide, the demonstrations and unrest that shaped the summer of 2020 tested the ability of local law enforcement to keep public safety priorities in proper balance with protected First Amendment expression. As we have noted, the large crowd dynamics were unique in many ways. The sheer number of participants, the inherent tension with law enforcement in the aftermath of the Floyd murder, and the overlap between committed peaceful protest, more aggressive behavior, and opportunistic criminality made that balance especially hard to maintain at times.

All of these factors were relevant to the events in Kalamazoo. In this section, we focus specifically on “crowd management” – the set of policies, procedures, techniques, and tactics within policing that are designed to preserve safety and order in the context of large-scale public events.

Unlike many agencies that found themselves significantly underprepared as the demonstrations gathered momentum, KDPS’s *prior* emphasis on this topic was both distinctive and creditable. One of its strengths was the relevant training that the Department was able to rely upon last summer. KDPS began crowd management training on the national level after a controversial 2007 protest and sent some officers to a Federal Emergency Management Agency training school out of state. Realizing that their established special units, such as SWAT, were not suitable for crowd management, they selected and specifically trained a Crowd Management Team (CMT) in 2018.³⁷ Moreover, according to KDPS, officers completed Department-wide, quarterly, in-house training regarding crowd management, spending one hour in a classroom to learn new laws or best practices and up to three hours on practical, hands-on training, as recently as 2019.

While KDPS had typically only responded to “out of control” college parties in recent years, and not large-scale protests where they themselves were the

³⁷ KDPS reported that they had planned to send the newly established CMT to the Federal training program but were unable to due to COVID-19. They plan to send all CMT personnel to training when it resumes.

subject of outrage, their crowd management response in May/June, while at times upsetting to the public, was largely closely supervised, carefully coordinated, and generally controlled. During the period of May 30 to June 2, KDPS faced a range of circumstances that illustrated different dimensions of its crowd management capabilities. Many of its fundamentals were sound and led to effective outcomes.

However, there were also instances in which the Department struggled to find the right balance in the very unique context of those days. As “crowd management” shifted into “crowd control” at different points that became controversial, there were many participants and observers who believed that the enforcement strategies constituted an overreaction.

As discussed below, we find merit to some of those criticisms and make our own observations about ways in which KDPS could respond more effectively in the future. At the same time, we acknowledge that the Department was operating in an extremely dynamic environment, that it manifested noteworthy restraint on May 30, and that it largely succeeded in keeping criminal activity from spiraling to the City’s detriment. Moreover, to the extent its efforts at control seemed excessive on June 1 and 2 (as with the curfew enforcement on Tuesday night), any shortcomings were driven by inflexibility and an over-emphasis on order – and not a problematic antagonism toward the reformist views of Black Lives Matter protesters.

Moreover, KDPS reported that they made at least some refinements in the aftermath of the May/June deployments, incorporating new technical resources such as real-time video tracking, purchasing vans for officer transport, and better internal communication tactics, such as establishing a tactical radio channel and equipment. These are the fruits of an introspective approach that we commend (while wishing, as we note throughout the Report, that it had been more holistic and constructively critical).

With some of the attributes that were on display in May and June and given the Department’s apparent commitment to effectiveness in this arena, the flaws we noted in the KDPS crowd management performance on August 15 – in terms of both planning and execution – seem all the more inscrutable. With that as a backdrop, we use this section to focus on some of the particulars of crowd management in more detail.

Crowd Management Team

The Crowd Management Team is a group of approximately 27 officers and supervisors who serve in this unit as a collateral assignment. One of the incident reports from June included this description in its preamble: *“The mission of the Crowd Management Team is to provide an effective and appropriate law enforcement presence at public assemblies and gatherings while protecting the constitutional rights of participants and discouraging acts of lawlessness.”*

CMT members are specially trained and equipped and have access to a range of less lethal munitions that are particularly designed for large-crowd deployments. They also wear the sort of distinctive protective gear (such as helmets, face shields, masks and padded or hard-surfaced body coverings) that is a touchstone of current debate about policing in the demonstration context. Officers cite the need to insulate themselves from the dangers of projectiles in the event a crowd becomes assaultive. At the same time, the appearance is “militarized” and somewhat intimidating in a way that critics suggest is authoritarian and chilling of First Amendment expression.

By its own account, KDPS was aware of – and deferential to – this phenomenon as it evaluated the circumstances on May 30, which was the first day of large-scale protest activity. As discussed above, the only CMT deployment that did occur was late in the proceedings and extremely narrow in its intentions: to extricate officers in two KDPS vehicles who had been tightly surrounded by a crowd that had hostile elements. In approximately 13 minutes, CMT personnel arrived in two vans, created space in the crowd through coordinated techniques (including giving commands and literally pushing individuals back), facilitated the departure of the officers, and left the scene themselves.

While questions about – and negative reactions to – their involvement quickly arose (to the point where the Chief was asked to make a responsive presentation to City Commissioners on June 1), it seems to have been a

reasonable tactic and an effective operation.³⁸ KDPS supervisors described themselves as pleased by how the day had gone, in no small part because in their view the CMT had been unobtrusive in the overall context of the protest marches.

The CMT was also active on June 1 and June 2. On these days, its involvement was more protracted and complex, in ways we discuss below. The late night/early morning period on Monday and Tuesday was perhaps the most frenetic; CMT personnel were reacting to various scenes of unrest and reports of criminal activity. This led to uses of force that we assess in more detail in a separate section. CMT was also on scene at the curfew standoff on Tuesday evening, and was responsible for deploying the tear gas that ultimately began to drive protesters from the disputed intersection. In that context, however, they were acting under the direct authority of a KDPS command staff member.

In short, the CMT itself appears to have performed in a disciplined and organized fashion for the most part and seems to be a valuable resource to the Department. Larger issues of decision-making that related to them and influenced their actions, but were not made *by* them, are a separate matter that we address elsewhere and throughout the Report.

Establishment of Police Zones for June Unrest

One distinct difference between Kalamazoo and other jurisdictions that OIR Group has reviewed is the use of “police zones” for crowd management, a tactic authorized by the City to assist in the public safety response to certain large-scale events. A “police zone” is a public area that the Chief of Public Safety has determined must be cleared of people for various reasons, defined in the municipal code. Under municipal code § 22-51, the Chief of Public Safety can establish a police zone as an enforcement response, as follows:

³⁸ This was one example of a phenomenon that played itself out in multiple jurisdictions and would recur in Kalamazoo on June 1 and 2. In a large crowd environment, it is frequently the case that people in adjoining areas will sincerely have differing perspectives on the same events – unaware as they may be of dynamics or specific actions that are occurring nearby and shaping police response in ways they find confusing and/or upsetting.

Establishment of police line or clear zone.

A. When any fire, accident, explosion, parade, calamity, public disturbance or other occasion causes or may cause persons to collect on the public streets, sidewalks or other areas of the City, the chief of public safety or officer acting for him may establish a police line or zone as may be necessary for the purpose of affording a clearing for:

(1) The protection of persons and property;

(2) Police officers, firemen, or public safety officers, and emergency medical personnel; and other personnel performing operations in accordance with their duties;

(3) The exclusion of the public from the vicinity of a fire, accident, explosion, calamity, other emergency or public disturbances;

(4) The passage of a parade;

(5) The movement of traffic.

B. Any person who shall knowingly cross any such line, knowingly enter into any such zone, or remain in any such zone after being requested to leave, shall be guilty of a misdemeanor. Provided, that bona fide and properly identified representatives of the press and media, residents of said zone, and such other persons as the chief of public safety or officer acting for him may authorize to cross such lines or be within such zone, may be permitted to cross such lines or enter into such zone, and may remain in such zone so long as they will not and do not interfere with emergency personnel performing their duties.

C. Every person present within such zone shall comply with any necessary order or instruction of any police officer and any person who refuses to comply with the necessary order of a police officer shall be guilty of a misdemeanor.

Essentially, it provides law enforcement a tool to clear an area regardless of the crowd's actions, for any of the reasons listed in the municipal code above.³⁹

By the summer of 2020, the City was no stranger to the establishment of police zones; Kalamazoo had established "police zones" to prevent the spread of COVID-19 by using the code provision to limit large parties and public gatherings.⁴⁰ And, as evidenced by its inclusion in each of the summer 2020 Operations Plans that we reviewed, it was a familiar policing tactic when dealing with crowds.

In different forms, the concept ended up applying on both June 1 and June 2. On June 1, it was reportedly imposed *during* the evolving disturbances in an effort to clear the downtown area. We reviewed a report from a CMT participant that referenced the police zone as follows:

The majority of our time was used to address crowds on W Michigan from Park to Rose and south to Academy. Members of these groups were destroying windows to buildings in the area, throwing rocks and bottles at officers then moving to unlit areas and returning with the appearance that they were peaceful. Orders were given to back up, clear the area and eventually orders were given to clear the area that it was an established police zone throughout Bronson Park, on Church south of W Michigan and from Rose to Park. This orders [sic] were initially given verbally and then by loudspeaker. Officers were outnumbered by crowds and deployed gas and pepper spray when subjects did not comply.

³⁹ This is in direct contrast to other crowd management tools, such as the concept of declaring an "unlawful assembly," for example, which requires the crowd to be "disturbing the public" and for at least some in the crowd to be either violent or tending to incite others to violence. The Kalamazoo ordinance arguably provides a greater range of justifications and depending how it is interpreted, thereby enhances law enforcement discretion, perhaps too much so.

⁴⁰ KDPS declared a police zone, for example, on March 13, 2020, to prevent large parties related to St. Patrick's Day in the earliest phase of the COVID-19 pandemic.

While the night had devolved into disorder and criminal behavior on several different fronts, we did *not* see recorded evidence or other documentation that established the particulars of the declaration, or the time, thoroughness and clarity of any formal notifications. Instead, the efforts at crowd control included CMT officers directly ordering people to leave – a communication strategy that had mixed results in a frenetic, contentious environment.

The Department maintained later that many of the most disruptive and problematic individuals in the crowd were consciously eluding officers and then regrouping under the guise of peaceful protesters. We do not have a basis to discount this, at least for some in the group. But without proof, we also doubt that the characterization applied to *all* the individuals who were resisting the dispersal orders, and who later professed to be mystified by the Department's use of pepper spray and other techniques on them.

Here, KDPS may have been better served by an audio system that eliminated ambiguity and reduced the reliance on individual officers yelling orders at crowd members who has assembled to protest law enforcement excesses. Moreover, those assigned to give orders should ensure that there is a clear recording and documentation of those instructions, so that there is a record of these instructions should this important aspect of crowd control be subsequently questioned.

For better or worse, the crowd control strategy on June 2 was comprehensive, restrictive, and preemptive in comparison. This was partly in reaction to both the events of the previous day and the claimed intelligence about the possibility of further disruption. KDPS imposed what it called a "peace zone" to support curfew enforcement and restrict access.

The establishment of a peace zone accomplished the goals of deflecting entry into the downtown area and neutralizing the disorder experienced Monday night before it could begin. But, in the context of First Amendment assembly where a crowd is engaged in peaceful protest and there is no emergent concern to public safety, the use of blanket police zones could have a chilling effect on protected speech.

It deserves careful consideration accordingly. And, as we observed at the Arcadia Festival Site in August, the establishment of a police zone may last past when it is useful, necessary, or practicable.

RECOMMENDATION 7

KDPS and the City's leadership should engage with the community as it considers the circumstances required to declare a police zone in the context of crowd management. The resulting guidelines should be publicized in a way that provides City residents and stakeholders a clear understanding of under what circumstances KDPS will declare a police zone in response to protest activity.

RECOMMENDATION 8

KDPS should utilize their vehicle PA system or alternative audio system to clearly and loudly communicate with crowds, especially when issuing dispersal orders or other instructions.

RECOMMENDATION 9

KDPS should create written protocols to ensure that any dispersal orders or other instructions to the crowd are recorded and documented proof that such orders were effectively given.

Crowd Management Planning and Decision-Making in August

On August 15, KDPS declared a police zone at Arcadia Festival Site very shortly after CMT squads were activated and deployed to the park from their various staging locations. Establishment of the police zone via P.A. announcements was written into the Operations Plan for the day's event as the second in a sequence of events if protests became violent, riotous, or damaging to property.

Dispersal orders were made throughout the Arcadia Festival Site – at the southern end of the park, where counter-protesters were clashing with Proud Boys, but also in parts of the park where demonstrators had gathered peacefully (and where some participants reported they hadn't even seen any of the Proud Boys). To those peaceful demonstrators who had stayed away from the melee along Water Street, the orders to leave the park were both confusing and frustrating. Many initially resisted the police orders, questioning why they were the ones being told to go home, and two individuals were arrested for violating the police zone.

Enforcement of the police zone at Arcadia Festival Site continued as the Proud Boys moved away from Arcadia and held their rally at Bronson Park. This continued enforcement made little sense to those who wanted to maintain a presence in the park. While this group was animated by what they had seen and heard about the clash with the Proud Boys, with that opposition out of the picture, they were a passive group at this point in the day, seemingly intent on making a statement by just being in the park together, occupying the space in the absence of the Proud Boys. This was reflected in a number of conversations captured on body-worn camera footage, with people questioning, “Why can’t we be here?” KDPS’s simplistic answer – “Because we established a police zone” – did not seem a satisfactory response.

When asked about the reasoning behind clearing the Arcadia Festival Site after the Proud Boys had left and the violence there had ended, KDPS personnel stated that they feared that the Proud Boys’ march route may loop back to the Arcadia Site. Clearing the entire park of counter-protesters seems like an extreme precaution against this possibility, when other enforcement strategies could have been employed to keep the groups separated had the Proud Boys signaled an intention to return to the Arcadia Site.

A specific interaction between a KDPS command staff member and a counter-protester was illustrative of the tension. The protester asked, “But why can’t you just stop there (pointing to the street) and let people have this (gesturing at the park)? Why’s it got to be a show of force?” The command staff member seemed for a moment to understand the protester’s point, but ultimately responded, “When we establish a police line, we have to enforce it.”

This response was not surprising. Law enforcement officers, by training and culture, are conditioned to expect individuals to comply with their commands. Traditional police training stresses that officers should first *ask* people to comply with an order, then *tell* them and then, if they still have not complied, *make* them. But in today’s climate, particularly in the context of crowd management situations, law enforcement should think more critically about the

need to make and enforce commands. If there is no exigency, no real reason to rush to the “make” stage, perhaps a different approach is warranted.⁴¹

On August 15, a more critical assessment of the specific circumstances presented might have led to a different outcome. The Proud Boys had moved on and the fighting had ceased. There did not seem to be a real exigency to clear the park at that point, and it is worth questioning whether KDPS could have maintained a presence at the perimeter, monitoring the status of the crowd and movement of the Proud Boys, and deferred further enforcement of the police zone.

Unfortunately, it seemed that KDPS had committed to the imposition of the police zone dispersal orders and felt it could not step back and re-assess the need for continued enforcement. What was needed, in our view, was the ability to pause and consider the broader implications of continued police action, with an understanding of the needs of the Kalamazoo community. Continued enforcement of the police zone against the counter-protesters at the Arcadia Festival Site, simultaneous with the Proud Boys rally at Bronson Park, fueled the community’s anger about the Proud Boys’ incursion in the City and furthered the narrative of KDPS bias.

Going forward, KDPS and City leadership should consider when imposition of a police zone is appropriate, considering the location (e.g., blocking a roadway versus an open park, for example), the nature of the crowd (e.g., engaged in peaceful protest versus illegal activity) and balancing the needs of the City and its safety with the right to protest.

KDPS and the City’s leadership should also consider what set of circumstances should be required in a public protest setting prior to the declaration of a police zone. Ideally, the City’s leadership and KDPS should engage with the community as it develops these guidelines, through direct outreach to residents, business owners, and groups most impacted. The resulting policies and guiding principles should be publicly announced so that

⁴¹ This observation aligns with our impression of the curfew enforcement that occurred on June 2, when KDPS tried gamely to persuade the protesters but then moved into aggressive dispersal mode in the absence of apparent exigency.

City residents and stakeholders understand the “ground rules” in advance of the next protest.

RECOMMENDATION 10

KDPS and the City’s leadership should develop principles around when imposition of a police zone is appropriate in the protest context.

RECOMMENDATION 11

KDPS should evaluate its policy and training around police zones to ensure sufficient emphasis on flexibility and continual re-assessment of exigencies and other circumstances.

Civil Disturbance Notifications

One critique following protests across the nation last summer was the failure to issue complete, loud, and effective dispersal orders to a crowd prior to dispersing them with less lethal munitions and/or making mass arrests.⁴² Here again, KDPS diverged from other agencies: KDPS has several specific “civil disturbance intent” notifications as well as a dispersal order policy that follows best practices, and it largely followed its own policy related to dispersal orders. But we did note room for improvement and additional considerations for the Department in this area.

According to modern crowd control best practices, dispersal orders should be loud, understandable, repeated several times as practicable, and include the following language:

- Declaration of an unlawful assembly and the location
- Order to leave immediately
- Potential for arrest
- Warning of use of less lethal force that may result in injury
- Route(s) for dispersal

⁴² A *dispersal order* is an announcement given by law enforcement to two or more people who are engaged in an unlawful assembly. The intention of a dispersal order is to inform the crowd that they are engaged in unlawful assembly and to make clear that they must immediately leave the area or be subject to arrest or force.

- Length of time to disperse

KDPS's policy regarding dispersal orders includes these details. In relevant part, the policy states (see 430.6 UNLAWFUL ASSEMBLY DISPERSAL ORDERS)

If a public gathering or demonstration remains peaceful and nonviolent, and there is no reasonably imminent threat to persons or property, the Incident Commander should generally authorize continued monitoring of the event.

Should the Incident Commander make a determination that public safety is presently or is about to be jeopardized, he/she or the authorized designee should attempt to verbally persuade event organizers or participants to disperse of their own accord. Warnings and advisements may be communicated through established communications links with leaders and/or participants or to the group.

When initial attempts at verbal persuasion are unsuccessful, the Incident Commander or the authorized designee should make a clear, standardized announcement to the gathering that the event is an unlawful assembly, and should order the dispersal of the participants. The announcement should be communicated by whatever methods are reasonably available to ensure that the content of the message is clear and that it has been heard by the participants. The announcement should be amplified, made in different languages as appropriate, made from multiple locations in the affected area and documented by audio and video. The announcement should provide information about what law enforcement actions will take place if illegal behavior continues and should identify routes for egress. A reasonable time to disperse should be allowed following a dispersal order.

In May/June, we observed and KDPS reported that they made many attempts to disperse crowds using mostly informal, verbal persuasion, and that these instances rarely had the intended outcome. This suggests that both negotiation and formal clarity have their place: the former in an effort to achieve collaborative, relational solutions and the latter to ensure that notice

and fair warning accompany the exercise of enforcement authority in this context.⁴³

RECOMMENDATION 12

KDPS, in collaboration with its community, should determine a clear protocol for dispersal orders with the goal of gaining voluntary dispersal prior to issuing formal dispersal orders.

RECOMMENDATION 13

KDPS should ensure that its personnel are regularly briefed and advised on its policy requirement that any dispersal orders instruct the crowd on appropriate dispersal routes.

RECOMMENDATION 14

KDPS policy and training regarding dispersal orders should be revised to require personnel officers to include express warnings about the potential use of force should the order be defied.

As noted earlier, on August 15, KDPS officers read a “Civil Disturbance Notice of Intent to Arrest” when they initially declared a police zone in Arcadia Festival Site and as they proceeded to clear the area.⁴⁴ This order was as follows:

Notice of Intent to Arrest for Failure to Clear a Police Zone.

- 1. This is the Kalamazoo Police.*
- 2. This gathering is contrary to City Ordinance. You have 10 minutes to clear the area or you face arrest.*

⁴³ We noted that KDPS issued formal police zone notices on June 2 at each intersection that marked the police zone perimeter. These were explicitly documented in detail in a post-event Incident Report by the officer who issued them. This level of documentation is commendable and advised for future incidents of this nature.

⁴⁴ KDPS provided two pre-written “Notices of Intent” to arrest: one for impeding traffic and one for failure to clear a police zone. These are written warnings to be read over a loudspeaker that give explicit warnings of imminent arrest if individuals fail to comply and/or leave the designated area.

3. By Authority of Section 22-51 of the Kalamazoo Code of Ordinances, the police department has established a police line or clear zone (describe boundary streets) to clear the area.

4. All persons who do not leave this zone, or who enter the zone, will be arrested.

After 5 minutes

5. This gathering contrary to City Ordinances. You now have 5 minutes to clear the area or you face arrest.

Final warning

6. You are advised that a police line or clear zone is now established and you must leave this zone. All persons who do not leave this zone, or who enter the zone, will be arrested.

However, as written, these notices do not follow the aforementioned best practices for dispersal orders; namely, they did not provide safe routes of egress. In a chaotic crowd management situation, individuals may not know where or how to leave an area even if they intend to; indeed, we observed this in August 15 video footage of officers clearing Arcadia Festival Site, as several individuals stated that they did not know where to go or how to comply with the order.

KDPS did note that they are in the process of making changes to their crowd management public announcements. One member of Command staff in charge of this process stated that KDPS used specialists from their Crisis Intervention and Hostage Communication teams to craft new language. Among the changes they reported, are:

- Language specific to leaving the area with clear instructions on points of egress
- Instructions for what “not to do” when engaging in peaceful protest (e.g., please do not break windows)
- Statements permitting peaceful protest (e.g., “you can protest peacefully here”)

RECOMMENDATION 15

KDPS should publish a new dispersal order and “notices of intent” to include clearer and more detailed instructions in their public announcements, include the new language in Department policy where applicable, and train officers regarding this new language.

RECOMMENDATION 16

KDPS, in collaboration with its PIO and the City’s leadership, should continue to work on the above-listed public communication strategies related to crowd management and, when complete, communicate these to its community and train officers accordingly.

KDPS also reported that, in response to the confusion and outrage generated by their targeted arrests, they are creating a plan to communicate with the crowd about arrests. This plan includes having a dedicated officer communicate with the crowd in real-time using a Public Address system or megaphone, detailing the nature and purpose of the arrest.

Finally, KDPS also reported that it is working with its newly hired Public Information Officer to communicate relevant information, such as arrests, police zones or dispersal orders, with its community in real time through social media.

Work of the City Commission Sub-Committee

Within days after the Proud Boys visit to Kalamazoo, the City Commission created a Sub-Committee to develop a roadmap to prepare for future protests and demonstrations. The Sub-Committee was created in response to concerns regarding KDPS’ handling of protest activity.

In December 2020, the Sub-Committee issued its final report.⁴⁵ One major deliverable of the Sub-Committee work was the development of a First Amendment Assembly Communication Strategy. The strategy contains ambitious goals to achieve better coordination and communication prior to,

⁴⁵ The Report and relevant attachments can be found at:
<https://www.kalamazoo.org/news/811-first-amendment-sub-committee-report>

during, and after a protest event. The strategy aligns with best practices in communication and coordination. We encourage the City to continue to work on the recommendations set out in the final report so that implementation of the lofty goals set out in the Sub-Committee report can be achieved, and to address the recommendations outlined in our Report.

Use of Force Analysis: Overview and Issues

The KDPS Crowd Management Team used various “less lethal” force tools in the summer of 2020. (Appendix B provides descriptions of the various less lethal force tools used.) While force deployments by police agencies are always worthy of attention as a particularly intrusive exercise of state authority, use of force in the crowd management/public demonstration context is an especially sensitive one.

Specific aspects of the KDPS response in this arena raised questions, and in this section, we discuss particular encounters from the perspective of both their advisability and their sometimes ambiguous adherence to Department policies.

First, a frame of reference is useful – and to some extent reflects well on KDPS. When viewed in comparison to some other jurisdictions’ uses of force from the same period, the Department’s less lethal deployment counts are relatively low in terms of volume and do not appear to have resulted in significant or wide-scale injuries.⁴⁶ This latter point is a critical one. The police response in a number of cities caused serious, and sometimes permanent, harm, and was often the result of the misapplication of less lethal tools.

Although many factors contributed to the Kalamazoo outcome, one seems especially noteworthy and commendable. That is the KDPS’s choice to refrain from making kinetic impact projectiles⁴⁷ part of its Crowd Management Team range of less lethal options. A number of the more notorious incidents around the country involved people being struck in the head, face, groin, or other

⁴⁶ We are aware of one formal complainant who complained of injury from being struck in the chest by pepper ball munitions. Presumably there are other similarly situated individuals as well who may have not registered formal complaints with KDPS or the City.

⁴⁷ “Kinetic impact projectiles” refers to various types of “less lethal” rounds, in varying degrees of hardness and design, deployed from shotguns or other types of launchers.

sensitive areas with these “rubber bullets” or hard plastic “baton rounds” which are designed to be restricted to the torso but are subject to accidental impacts in the dynamic environment presented by a crowd scenario. By staying away from this option entirely, KDPS avoided the associated problems, yet did not apparently lose its ability to otherwise address the resistance it encountered.

Despite the relatively low overall counts and minimal injuries, KDPS’s uses of less lethal force over the summer merit careful analysis. This is a function of both the inherent sensitivities of “crowd control” and that some deployments raise questions with regard to applicable Department policy. Importantly, the evidence suggests that the issues have more to do with blurred lines within the crowd control context than any egregious acts of intentional misconduct. Nonetheless, they merit thorough review and consideration.

Force Deployment Counts

To determine the type and amount of force that was used, we extracted information from limited materials that KDPS provided. These are detailed in the following table. While it may track *general* activity levels from the days in question, we are unsure as to how comprehensive it is, given the limitations in reporting we discuss below.

KDPS Estimated Use of Force Summer 2020

Type of Force	June 1	June 2	Aug 15	Total
Baton push	5			5
CS Gas/Muzzle Blast	8	2		10
Gas Grenade*	2			2
OC Spray*	10		2	12
Pepper ball*	6	4	1	11
Smoke		2		2
Close-fist strike	1			1
Takedown	1		1	2
Total	33	8	4	45

** Gas grenades, OC Spray, and pepper ball counts were sometimes estimated by officers in their reports.*

Force Reporting: Limitations and Deficiencies

As a matter of *process*, our assessment is limited to the evidence and documentary materials that KDPS generated and/or provided to us. Unfortunately, this was disappointing across a few different categories.

One such category was the written reporting by officers that used force. Expectations per Department policy are clear, as reflected in the following:

300.6 USE OF FORCE. REPORTING THE USE OF FORCE.

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The public safety officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. In addition, the officer that utilized force shall complete the KDPS Use of Force report and submit the report to their supervisor for review.

430.7. FIRST AMENDMENT ASSEMBLIES. USE OF FORCE.

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report. The type of report required may depend on the nature of the incident.

304.8 PNEUMATIC PROJECTILE SYSTEMS

Public Safety Officers encountering a situation that warrants the use of a pepper projectile system shall notify a supervisor as soon as practicable. A supervisor shall respond to all pepper projectile system incidents where an individual has been hit or exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy. Each deployment of a pepper projectile system shall be documented. Unintentional discharges shall be promptly reported to a supervisor and documented on the appropriate report form. Only non-incident use of a pepper projectile system, such as training or a product demonstration, is exempt from the reporting requirement.

In spite of this, our specific data requests did not produce copies of any “KDPS Use of Force reports” as referenced in Policy 300.6.⁴⁸ What we did receive were copies of incident or arrest reports from participating officers that alluded to their respective force deployments. These were helpful to an extent. But we also noted that several appear to have been written days or weeks after the relevant events, and that some of them share identical summary information. As for the descriptions of individual force use, these were largely lacking in detail, to the point where critical evaluation of the legitimacy of the underlying actions was often not achievable. For example, specific time markers and counts were rarely included, and acknowledgments of particular actions were often vague (“I assisted in clearing the crowd with my department issued MK-9”⁴⁹ was a typically terse description, containing no information about the basis for the force deployment).⁵⁰

We recognize that several factors may have complicated the reporting process during the unrest, particularly during the night of June 1 and early morning of June 2. The unusually high volume of deployments in close succession, and the relative lack of “suspects” in custody to whom specific force deployments could be “attached” for purposes of investigation and documentation, meant that a number of agencies around the country unfortunately deviated from their normal protocols. In short, the same ongoing, real time challenges that were leading to so much force were also interfering with the ability to formally account for it.

⁴⁸ We were advised that KDPS practice is that use of force reports are not prepared in all cases and in those cases the force review is reliant on the incident report instead. However, as set out above, that “practice” does not square with KDPS Policy: *In addition, the officer that utilized force shall complete the KDPS Use of Force report and submit the report to their supervisor for review.* (emphasis added).

⁴⁹ This is a reference to the spray that is carried in what looks like a small fire extinguisher, and which is delivered in high volume.

⁵⁰ In fairness, a small percentage of report writers came much closer to providing useful accounts, including the mention of instances in which they refrained from using force, and the particular justifications for deployments that did occur. (“Only after confirming seeing two individuals throwing those object [sic] did I deploy several projectiles from my pepper ball launcher.”)

Even so, there is no documentary evidence that KDPS made a concerted effort to overcome these reporting obstacles or engaged in a rigorous review of its officers' actions. Importantly, we were told that the Department had found all uses of force to be "in policy." But there was no work product that reflected any sort of supervisory analysis or basis for that cumulative decision.

KDPS did seemingly identify this issue in their August 15 CMT After Action Report. Among other recommendations, the Incident Commander wrote: "Munition Bags-premade go bags that can be secured for inventory purposes." These pre-made bags might allow for pre and post-deployment counts and may be the start to an effective way to track munitions.

RECOMMENDATION 17

KDPS should continue to develop effective tracking mechanisms for less lethal munitions, including the munition bag recommended in its After-Action Report and a tracking log, specifically to track how many of which types of munitions are used and by whom.

Nor was this problem mitigated in Kalamazoo – as happened in some jurisdictions – by the evidentiary assistance of body-camera recordings. In other jurisdictions, the body-worn camera footage provided useful information. We are even aware of some agencies in which officers narrated their actions on camera in the midst of ongoing deployments in order to explain why they used force and provide an aid to later documentation.

KDPS produced surprisingly little of body-worn camera footage from the May 30 to June 2 period, and we were further disappointed to eventually be advised that many KDPS personnel were not outfitted with body-worn cameras during their June 1/June 2 deployment – the period in which some of the most wide-ranging (and disputed) unrest occurred.

When asked, KDPS explained to us that they learned that the body-worn camera's mounting mechanism did not work on the officers' tactical uniforms; as such, the majority of officers did not wear their body-worn cameras the initial days of protest activity. Noting this, KDPS eventually implemented a new method to attach the body-worn camera to tactical gear by June 2. While this was helpful, and while the number of recordings from August 15 proved to be much greater, we found the earlier two-day lapse to be problematic.

KDPS noted that at least one officer wore and activated the body-worn camera on May 30; OIR Group reviewed the body-worn camera footage of this officer. The fact that this officer found a way to wear the body-worn camera despite wearing tactical gear suggests that others may have found a way to do the same. Moreover, the fact that this problem was seemingly overcome in time for Tuesday night's deployment to the curfew standoff suggests that it was far from insurmountable. Ensuring effective deployment of body-worn cameras should have been a priority during the planning stage of KDPS preparation for protest activity.

This is especially true in so far as the only recordings we have of one controversial deployment (that of individuals who were lying on the ground before being sprayed early Tuesday) were from private cell phone video or news coverage. And we saw no recordings of highly disputed uses of pepper ball and chemical munitions against groups of protesters who were refusing to leave in the area of Bronson Park during that same period. Accordingly, one of the key attributes of body-worn cameras – their ability to lessen controversy over police encounters by providing an objective record of what occurred – was not in play for much of this review process.

OIR Group noted that KDPS's body-worn camera policy requires officers not only to wear and activate a body-worn camera, but to also inform a supervisor if the body-worn camera is malfunctioning (while the devices presumably worked, the inability to mount the camera on tactical gear could well be considered a "malfunction"). The policy reads as follows:

424.5. BODY-WORN CAMERAS. MEMBER RESPONSIBILITIES. Prior to going into service, each uniformed member will be responsible for making sure that he/ she is equipped with a portable recorder, issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable.

We are not aware of any corrective action that was taken with regard to those officers who failed to meet Departmental expectations in this regard. We urge that KDPS do so, even at this late juncture.

RECOMMENDATION 18

During the planning and debriefing phase of any anticipated First Amendment protest activity, KDPS should stress the need to effectively report uses of force and the effective use of body-worn cameras and include those tasks in any operations plans.

RECOMMENDATION 19

KDPS should consider ways to prioritize and facilitate effective and comprehensive reporting related to uses of force by its personnel in the specific context of crowd management/crowd control, so as to overcome some of the inherent challenges to timeliness and specificity.

RECOMMENDATION 20

KDPS should formally address the wide-scale lapses in adherence to the body-worn camera policy that occurred during the May 30 to June 2 operational period.

KDPS Policy: Force in Crowd Management

Part of the difficulty in applying KDPS force policy to particular situations was that the situations themselves were fluid or complex or ambiguous. The Department has specific policies related to force in the “First Amendment Assemblies” context. Importantly, but not always clearly, they are meant to align with and be shaped by other elements of “current department policy and applicable law.”

The “First Amendment Assemblies” use of force policy, presented below, allows the Incident Commander to “adopt a reasonable response in order to accomplish the law enforcement mission.” But even when the Incident Commander determines that force is the appropriate tool, it is limited: control devices (such as pepper balls) and OC spray can only be used “when the participants’ conduct reasonably appears to present the potential to harm public safety officers, themselves or others, or will result in substantial property

loss or damage.” Further, the policy states that these devices should be directed at individuals, not crowds, unless the crowd is “riotous.”⁵¹

430.7. FIRST AMENDMENT ASSEMBLIES. USE OF FORCE

Use of force is governed by current department policy and applicable law (see the Use of Force, Handcuffing and Restraints, Control Devices and Conducted Energy Device policies). Individuals refusing to comply with lawful orders (e.g., nonviolent refusal to disperse) should be given a clear verbal warning and a reasonable opportunity to comply.

If an individual refuses to comply with lawful orders, the Incident Commander shall evaluate the type of resistance and adopt a reasonable response in order to accomplish the law enforcement mission (such as dispersal or arrest of those acting in violation of the law).

Control devices and Conducted Energy Weapon (CEW)s should be considered only when the participants’ conduct reasonably appears to present the potential to harm public safety officers, themselves or others, or will result in substantial property loss or damage (see the Control Devices and the Conducted Energy Device policies).

Force or control devices, including oleoresin capsaicin (OC), should be directed toward individuals and not toward groups or crowds, unless specific individuals cannot reasonably be targeted due to extreme circumstances, such as a riotous crowd.

The Department’s adherence to these principles could be interpreted to turn in part on whether the conduct being addressed was a “First Amendment

⁵¹ The policy does not provide any further definition for what constitutes a “riotous” crowd. This is a potentially large exception for non-targeted use of control devices against groups and crowds and could become subject to wide variety of interpretations and an exception that could largely swallow the rule. KDPS should amend its policy to either specifically define a “riotous crowd” or eliminate the terminology.

Assembly” or not. And, as we discuss in detail below, in several instances in May/June, the line between “First Amendment Assembly” and other behavior (namely, opportunistic looting, vandalism, or other unlawful behavior) was blurred.

RECOMMENDATION 21

KDPS should revise its use of force policies to either specially define “riotous” or eliminate the terminology from its policies.

RECOMMENDATION 22

KDPS should work with City leadership and community representatives to establish the circumstances for which different crowd control techniques should be authorized.

RECOMMENDATION 23

KDPS should review its overlapping policies in the arenas of First Amendment assemblies, specific force options, and crowd control to ensure consistency and address existing ambiguities.

Use of Tear Gas and Other Munitions: Downtown Crowd Control

A combination of less lethal munitions, including various types of gas and pepper ball, were utilized in the course of addressing the final hours of unrest that unfolded late Monday night June 1 into June 2.⁵²

While we are unclear about the precise scope of the force that was used on June 1 into June 2, we do know that some aspects of it generated subsequent criticism and anger. To the best of our abilities to re-create the individual incidents, once the Department moved into crowd dispersal mode, and was allocating resources across individual hot spots of reported criminal behavior, the lines between peaceful protesters and “rioters” became increasingly difficult for KDPS to draw. While much of the force remained targeted (at least

⁵² Other hands-on force options were used during this operation as well, including shoves with batons and, in at least one documented instance, punches to help overcome the resistance of a struggling arrestee during handcuffing. Some officers reported their baton pushes/shoves as uses of force; we captured these in the table above.

per KDPS documentation) at specific individuals engaging in aggressive or assaultive behavior, at least some was deployed less discriminately, and with the goal of dispersing recalcitrant groups who were primarily just refusing to leave. This included the use of “tear gas” as well as pepper ball munitions and deployments of OC spray.

We do not have a basis to know that any of these uses of chemical agents violated policy in the technical sense or was malicious or punitive in its orientation. (Here again, the sparse reporting and lack of video evidence complicates the assessment.) But the disconnect between public perception and the Department’s assertions suggests that, if nothing else, better communication – both in real time through formal announcements and warnings, and in terms of subsequent explanations to the community – was warranted.

We have more reason to doubt the advisability and appropriateness of another high-profile use of force by CMT personnel during those hours. This was the deployment of several varieties of munitions by different officers as they approached a group of about twenty protesters who were literally lying in the street. The officers used gas and pepper balls, firing these on the ground in front of the protesters.

The Department maintained that these individuals were effectively “posing” as peaceful protestors after having been identified as (and pursued for) engaging in criminal misconduct – including multiple instances of throwing objects at officers. However, while it is true that a live news reporter described people throwing things at officers in the moment before the encounter, and while strained resources limited officer ability to engage in a mass arrest strategy in lieu of dispersal, this picture was a stark one that made the officers appear to be inflexible, excessive, or both. A better strategy would have been to take the time when the protestors were lying in the street to marshal additional resources and arrest those who could be identified as engaged in prior assaultive behavior.

Further, the deployment of pepper balls in this instance was especially troublesome. As we noted in the introduction to this section, projectiles can

cause significant injury, especially when they strike the face or head.⁵³ While KDPS officers stated that they fired these rounds on the ground, intending to “skip” the rounds (and their chemical payload) toward the protesters without actually striking them, this specific scenario could have resulted in head and other injuries and is ill-advised.

To inform our review of this incident, and because this was one incident that blurred the line of “First Amendment Assembly,” we reviewed three additional Department policies related to the “control devices” used that evening, OC spray and pepper ball (referred to herein as “pneumatic projectiles”). They are as follows:

300.3.2(b) 4. USE OF FORCE. SUBJECT CONTROL CONTINUUM.

*Oleoresin Capsicum (OC) Spray: OC spray has application **where the subject’s actions constitute active resistance or active aggression**⁵⁴, or when the officer reasonably believes lower forms of empty hand controls⁵⁵ will be inadequate.*

304.7. CONTROL DEVICES. OLEORESIN CAPSICUM (OC) GUIDELINES

*As with other control devices, OC spray and Pneumatic projectiles may be considered for use to bring under control an individual or group of individuals who are engaging in, or are about to engage in, violent behavior. **Pneumatic projectiles and OC spray should not, however, be used against individuals***

⁵³ Pepper ball rounds, while typically classified in the “chemical munitions” category instead of as a kinetic projectile weapon, are fired from a pneumatic launcher at high velocity and are, essentially, a type of projectile round that can cause significant injury to individuals struck by them.

⁵⁴ Actively resistant is defined as “any action by a subject that attempts to prevent an officer from gaining control of the subject (e.g., pulling/pushing away, blocking, etc.).” Actively aggressive is defined as “physical actions/assaults against the officer or another person with less than deadly force (e.g., advancing, challenging, punching, kicking, grabbing, wrestling, etc.).”

⁵⁵ “Empty hand controls” are, for example, pain compliance techniques like joint locks (used for passively resisting subjects) or strikes and takedowns (used for actively resistant subjects).

or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of department members or the public.

304.8 CONTROL DEVICES. PNEUMATIC PROJECTILE SYSTEMS (ENHANCED MECHANICAL FORCE)

*Pneumatic projectiles are plastic spheres that are filled with a derivative of OC powder, powdered bismuth or marking paint. Because the compressed gas launcher delivers the projectiles with enough force to burst the projectiles on impact and release the payload, the **potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin.** Therefore, personnel using a pepper projectile system **should not intentionally target those areas**, except when the public safety officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the public safety officer or others.*

(emphases added)

While KDPS reported that it reviewed and found all uses of force to be “in policy,” we urge KDPS to re-evaluate whether this specific force deployment was in compliance with Department policy and expectations, and to evaluate the advisability of the use of pepper balls in this unusual circumstance.

RECOMMENDATION 24

KDPS should conduct a detailed analysis regarding whether the use of control devices, including pepper balls, on June 1 and 2 was consistent with Department policy and expectations.

RECOMMENDATION 25

KDPS should assess its deployment of pepper balls toward individuals who are laying on the ground with an understanding of how that creates the potential for striking the head.

We also encourage the Department to consider alternatives – including attempts at arrest – in this unusual situation of prostrated subjects who clearly were not posing an imminent threat at the time chemical agents were deployed.

RECOMMENDATION 26

KDPS should assess its policies and training regarding appropriate force deployments on passive individuals who are laying on the ground.

Use of Tear Gas: Curfew Enforcement

The use of CS gas against the large group blocking the intersection on Tuesday evening – after the arrival of the 7:00 PM curfew deadline – occurred under significantly more controlled circumstances than the previous May/June events. This had both positive and negative implications for the performance of KDPS.

More positively, this gave KDPS the opportunity to communicate with protesters and to urge them to leave the area through verbal persuasion. As we note elsewhere, there was much to admire in the willingness of a KDPS command staff member to make himself vulnerable in different ways (including taking a knee with the protesters) and to convey both solidarity with their cause and a commitment to reform efforts. We also endorse the tactic of using inert gas, or “green smoke” – which makes a visual impression but is not incapacitating – as a first step in an effort to convey the Department’s intentions directly and ideally persuading some portion of the crowd to leave before matters escalate further.⁵⁶ And there is no question that participants were “on notice” as to the potential consequences of their persistence. The Department’s announcements were clear and consistent with sound practice.

But the Department’s ultimate follow-through with actual tear gas deployment, which occurred after about a half hour of intermittent negotiation and discussion was misguided. Though the KDPS command staff member made references to the unsafe nature of the group’s presence in the middle of the intersection, the evidence is that the situation was more in line with this passage from policy 430.6 (Unlawful Assembly Dispersal Orders):

⁵⁶ As mentioned elsewhere, less impressive was the “counting tactic” deployed by the command staff member (“You have thirty seconds...”). This both created artificial time pressure and had undertones of parental discipline that were unlikely to resonate with the protesters and achieve the compliance sought.

If a public gathering or demonstration remains peaceful and nonviolent, and there is no reasonably imminent threat to persons or property, the Incident Commander should generally authorize continued monitoring of the event.

The gas deployment also played into longstanding – and disfavored – images from the past of police agencies “oppressing” peaceful protesters by gassing them for their passive resistance. Accordingly, and on the heels of Monday night’s controversial enforcement decisions, it reinforced some of the notions of excess that the protesters were specifically – and peacefully – rebelling against.

While the introduction of chemical agents accomplished the goal of dispersing the crowd (in conjunction with the additional forward movement and arrests by CMT personnel and mutual aid partners), it did so at a further cost of credibility and connection to the community. This is unfortunate whenever it occurs, but especially when it is avoidable. And this is particularly so when the feelings of the community are particularly precarious.

Importantly, there is no evidence to suggest that bias against the protesters’ point of view was an animating factor in the decision-making. But the prioritization of control and rule enforcement over the dynamics within the community was a lost opportunity that “undid” much of the KDPS command staff member’s initial admirable outreach.

Tear gas should be considered a “last resort” in response to crowd behavior that has become definitively dangerous. This was not that. To the contrary, the presence of the National Guard at the “perimeter” locations and the relative calm of this group meant that there were no real downsides to using alternatives. KDPS could have waited respectfully for the group’s demonstration to play itself out or could have organized the arrest of participants who wished to express their civil disobedience to its logical endpoint.

With proper respect for the uncertainties of that period, and for the ways that KDPS’s perspective was influenced toward concern just as legitimately by Monday night’s outcomes as was the protesters’, we would encourage the Department and the City’s leadership to work together in defining the shared parameters for responses in future demonstration scenarios.

RECOMMENDATION 27

KDPS should revisit its policy on the use of tear gas to better define – and narrow – its authorization in the crowd control context, and to require a level of aggressive action on the part of crowd members prior to deployment.

Use of Force on August 15: A Stark Contrast

As it relates to use of force by KDPS, the August 15 event was a stark contrast to May/June because most of the physical conflict observed was between counter-protesters and Proud Boys members, *not* the police. This itself is a concern that we have discussed throughout the Report: had KDPS deployed sooner, those civilian uses of force, like fist fights, the Proud Boys deploying pepper spray, or the counter-protesters striking Proud Boys with objects, might have been avoided.⁵⁷

We noted one police use of force deployment on August 15; this occurred as a KDPS skirmish line was clearing Michigan Avenue after declaring the area a police zone. According to KDPS reports, as the CMT began its push to clear the street, they observed a man they had identified as an agitator. An officer attempted to arrest him but the man fled. Another man attempted to stop the officers and allegedly punched one officer.⁵⁸ One KDPS officer took the man to the ground while another sprayed him with OC spray. When some in the crowd came near, other KDPS officers sprayed onlookers with OC spray. Another deployed “a few” pepper ball rounds “at the ground in front of the rushing suspects.”

This incident lasted mere seconds and was highly dynamic and charged. The suspect was arrested and removed from the area.

⁵⁷ We acknowledge that we cannot know for certain what the outcome *would have been* if KDPS’s planning and deployment had been different for August 15.

⁵⁸ The video evidence does not definitively show that the individual “punched” the officer, but the individual did physically contact the officer’s chest and admitted as much. This was the only August 15 arrest that was prosecuted. The person pleaded guilty to attempted assault of a police officer, was given credit for two days of time served, and paid a fine and court costs.

While the totality of the circumstances here *technically* may have warranted the force deployment (officers reported that they observed a fellow officer being assaulted and an aggressive crowd “closing in,” and responded with force for their safety), individuals who observed parts of it or were directly impacted by it were understandably shocked. For example, one of the onlookers who was pepper sprayed recalled seeing officers, including a KDPS command staff member, rush toward protesters who were walking away and suddenly take a man to the ground. Not knowing the reason the man was being taken down, this onlooker approached the command staff member, stating that the individual had done nothing wrong. He reported that he was then sprayed with OC spray. The individual said he was disoriented and blinded as KDPS yelled at him and pushed him along the sidewalk.

As we noted in the Arrests section, above, this is another unfortunate instance of the misalignment between what the community experienced (a protester being taken down “for no reason” and individuals being suddenly sprayed for “assisting”) and the evidence. Later, KDPS was seemingly less-than-transparent regarding this incident and the release of related body-worn camera footage. As we discuss in more detail later in this Report, KDPS may find itself better served by increased transparency.

RECOMMENDATION 28

KDPS should consider increased transparency practices related to uses of force or other high-profile incidents, such as releasing requested body-worn camera footage to the public as soon as practicable.

The Equity Lens: Limitations of Data in Broader Analysis

One important component of our scope of work was to analyze the events of May/June and August 15 through an equity lens. We understand the purpose of an equity lens analysis is to provide a more inclusive perspective of these events by considering the underlying assumptions and impacts of decisions and actions taken by involved parties.

Part of an equity lens analysis requires data analysis. To that end, we conducted a quantitative evaluation of the raw data presented in the above sections related to arrests, enforcement, and uses of force.⁵⁹ Our analysis resulted in no statistically significant findings based on markers such as race, sex or age. Based on the small, limited numbers, we found nothing in the raw data itself that indicated, with regard to crowd control efforts, KDPS policed its Cty in a outwardly biased way during the summer of 2020.⁶⁰ As we noted earlier, we did identify the *absence* of arrests of Proud Boys members on August 15 versus the nine arrests of (majority White) counter-protesters and other attendees. Simply looking at the numbers to conclude that counter-protesters were 100% more likely to be arrested than Proud Boys members overlooks the complexities of the day (and the statistical insignificance of such a small sample size), including the background, planning, and choices made by KDPS.

Because the data can only tell so much (or, in this case, not much at all), our analysis for Kalamazoo goes well beyond the numbers. Throughout this

⁵⁹ As we previously noted, we largely estimated KDPS's use of force counts, and rarely identified unique "victims" of force. As such, with respect to use of force data, the nature of KDPS's reporting and, in fact, the nature of this incident (for example, deployment of tear gas impacts indiscriminately and without identifiable, unique victims), did not allow us to quantify identifiers, such as age, sex, or race of the victims of force.

⁶⁰ One might contrast this against the 2013 traffic stop study, which found statistically significant data that KDPS officers were more likely to stop Black drivers.

Report, we evaluate how the conduct and outcomes of these incidents certainly contributed to the very real *perception* that KDPS officers treat those who support the protest movement against police violence and racial injustice differently than those who express whole-hearted support for law enforcement.

And, while the equity lens is certainly valuable, we have always found that a forward-looking approach to equity has the most impact on an organization. We make recommendations throughout this Report for organizational or policy changes that are deliberately inclusive. And we were pleased to learn that City leadership in the area of Diversity, Equity, and Inclusion is aligned with these goals. Through the “Imagine Kalamazoo 2025” process, the City reported that it will focus on transformation, setting a foundation for ending bias of all kinds. These reviews are intended for two fundamental goals: as ways to uphold agency standards through public accountability, and as vehicles to enhance agency operations through identification of issues and concerns that evidence room for potential improvement.

Response of Other Agencies

Intra-Agency Support

Perhaps obviously, a City's response to large-scale events often requires the response of agencies beyond public safety, and, more importantly, coordination *between* City agencies. We noted three areas for comment, though none seemed to have an overwhelming impact on KDPS's response to protest activity.

First, we heard from both KDPS and other City officials that, at various points over the summer's unrest, the City's Public Services personnel reported that they were left alone on the street among upset protesters. Their personnel felt unsafe and unsupported by public safety partners, who had chosen not to have a visible presence in the streets that evening. Video evidence from the evening of August 15 specifically shows this: the Public Services truck, reportedly trying to set up a street blockade, was quickly surrounded by protesters, who began to yell and harass the employees inside. Public Services eventually turned around and left the area.

We noted that, after facing issues with intra-agency support and coordination this summer, the City of Santa Monica, California, created a robust "Civil Unrest Annex" plan that clearly outlines the role of public safety in supporting other City agencies, and vice versa, during instances of civil unrest. We highly recommend that Kalamazoo review this plan and frame a model that suits the City's needs.

RECOMMENDATION 29

The City should work to create a protocol for ensuring adequate safety and support to responding agencies as they respond to large-scale events, looking to the experiences of other cities as possible models.

Second, the nature of Kalamazoo's Public Safety model means that fire department personnel are also trained as peace officers; as a result, KDPS was able to backfill deployment with those who traditionally served as Fire

personnel. While we did not receive specific deployment data, this model seemingly worked in KDPS’s favor as, with some notable exceptions, they had additional staffing at the ready to manage crowds and respond to usual policing duties. And, as part of their public safety training, officers learned the Incident Command System, an operations planning system traditionally used exceptionally well by fire departments; the dual training meant that many officers were familiar with ICS concepts and their successful execution.

Finally, KDPS Command personnel reported that, in May/June, they did not have a local Emergency Operation Center (EOC) because they were under the “umbrella” of the Kalamazoo County EOC. This caused delays in declaring a “state of emergency” in June, especially in requesting emergency resources from the State level and requiring reliance on the Sheriff to assist with coordination and planning of mutual aid.⁶¹ Since the summer of 2020, Kalamazoo passed a City Ordinance to allow for a local Emergency Management Division. In the long-term, reported KDPS, they will be able to better prepare and plan at the local level as a result of this development.

Regional Partners

A Mutual Aid system is used to facilitate regional assistance to jurisdictions when its own resources are exhausted or inadequate. According to their incident reports, KDPS requested resources from various mutual aid partners, including the Michigan State Police (MSP) and from other local municipalities such as Kalamazoo Township, Portage, Battle Creek, and the County Sheriff, on May 30 and June 1 and 2. A bicycle unit from the MSP also responded on August 15 and staged outside of the Arcadia Festival Site.

We did hear about incidents involving outside agencies, sometimes troubling, during our community interviews.⁶² Unfortunately, KDPS did not provide data, such as counts or logs, related to the deployment of mutual aid, perhaps because no such data exists. And KDPS reported that they did not request or

⁶¹ KDPS reported that, aside from the delay in accessing State resources, being “under” the County EOC and Sheriff did not impede operations in May/June of 2020.

⁶² Most notably, we heard reports of MSP bicycle officers “chasing down” student protesters in the Vine neighborhood and that some individuals were detained in what they believed to be a MSP van.

collect any after-action reports, such as use of force or incident reports, from those agencies.

This dearth of information hindered our review, though it was clear from our community engagement efforts that KDPS – and not regional partners – was the focus of local concern and the impetus for our engagement. Nonetheless, KDPS’s post-event reviews should do more to assess the involvement of its mutual aid partners. To that end, KDPS should implement a system to track the deployment and count of responding mutual aid in real-time. And, as a regular practice, KDPS should request and receive the after action or incident reports from any agency that provided mutual aid, both to inform their internal review and determine if any future action is needed. Ideally, this would be accomplished by a mutual aid agreement so that all understand ahead of time what expectations are regarding sharing of information.

RECOMMENDATION 30

KDPS should implement a system to track the deployment and count of responding mutual aid personnel in real-time.

RECOMMENDATION 31

KDPS should develop a mutual aid agreement with partner agencies that, at a minimum, requires assisting agencies to document and share information regarding incident reports, arrest reports, and uses of force.

RECOMMENDATION 32

KDPS should, as part of their after-action review process, request and receive the after action or incident reports from any agency that provided mutual aid, both to inform their internal review and determine if any future action is needed.

National Guard

As detailed previously, after experiencing violence and civil disturbance the previous day and evening, City leadership declared the entire downtown area a police zone, or as reported by KDPS, a “safe zone,” on the morning of June

2.⁶³ The Chief requested the assistance of the Michigan National Guard to secure the perimeter of the downtown area by deploying to fixed posts at various intersections.⁶⁴ KDPS reported that the presence of the National Guard allowed their personnel to respond to usual calls for service and conduct crowd management and enforcement at “hot spots” in the downtown area.

Our review discovered that approximately 90 National Guard troops arrived in armored trucks and posted to various intersections around 5:00 PM.⁶⁵ To our knowledge, the National Guard was released from service around 11:00 PM on June 2.

Many of the people that we spoke from the Kalamazoo community expressed concern and confusion about the National Guard response. Specifically, some stated that the presence of the National Guard exacerbated tensions and that this “militarized force” had no place in their City. Others commented that requesting National Guard troops was a massive overreaction on the part of KDPS and City leadership.

Aside from providing a map of deployment locations, KDPS did not provide any information regarding the National Guard deployment. However, this may be another area for review by City leadership and KDPS: when is it appropriate and necessary to call in the National Guard, and how does their presence impact the tone of local large-scale events?

RECOMMENDATION 33

The City’s leadership should work with KDPS and its community to establish agreed-upon guidelines for when to call in the National Guard and publicize these to the community in advance of future events.

⁶³ As discussed elsewhere in this Report, KDPS issued public announcements at each of these intersections declaring the downtown area a police zone.

⁶⁴ The Michigan National Guard is a military reserve force under the control of the Governor of Michigan that can be activated to assist local jurisdictions in states of emergency or specialized actions.

⁶⁵ <https://www.dvidshub.net/news/371315/michigan-national-guard-responds-request-assistance-kalamazoo-civil-authorities>

Response to Protest Activity: Learning from Others

KDPS reported that, in advance of their own unrest, they were reviewing the enforcement actions of neighboring police agencies, such as Lansing and Grand Rapids. They reportedly included these “lessons learned” into their own Operations Planning.

Going forward, KDPS should continue to learn from its neighboring jurisdictions and, moreover, review after action reports from other cities (such as Los Angeles, Seattle, Iowa City, Santa Monica, New York, and Denver, among countless others) to evaluate the issues confronted by their law enforcement agencies so that it can learn from recommendations coming out of those reviews. The City’s Citizens Public Safety Review & Appeals Board (CSPRAB) seems a potential good fit for identifying best practices identified elsewhere and importing them to Kalamazoo, as well as a number of other recommendations herein directed to the City.

RECOMMENDATION 34

KDPS should reach out to other law enforcement agencies who experienced similar civil unrest in the summer of 2020 and review after action reports from other jurisdictions to identify best practices that could be imported to Kalamazoo in responses to future protest activity.

KDPS: Internal Review, Self-Scrutiny, and Public Communication

As described above, we received public input in a variety of forums while developing the findings that comprise this Report. A clear consensus can be hard to come by in such a process. Understandably, people's experiences, outlooks, and opinions differ. They may be focused on different elements of the same situation, or be operating under different understandings of the facts, or simply divergent in their opinions. (Consider, for example, an advocate of the curfew for the safety it promoted vs. a critic who found it unduly silencing of legitimate demonstrations.)

We encountered this sort of range in our outreach with Kalamazoo, and there was ample representation of both supporters and detractors of KDPS. These perspectives, and the reasoning behind them, were very helpful to our evaluation. But we were also struck by the recurrence of another theme that emerged from a less overtly partisan contingent.

Though these individuals had distinctive backgrounds, they shared the view that KDPS had fallen short in one or more ways last summer in spite of having many strengths as an agency. And, importantly, they also believed that KDPS had significantly exacerbated any shortcomings through a combination of defensiveness, tone-deafness, and seeming indignation. To them, it was KDPS's poor communication and an unwillingness to engage with criticism that ended up leaving a worse impression than any qualms they may have had about the original enforcement actions. This is a viewpoint that merits attention.

We emphasize that KDPS personnel were cooperative and professional in their interactions with OIR Group. At the same time, though, we could relate to some of the concerns expressed above. We found ourselves surprised by the consistency and vigor with which KDPS defended its actions, and by the seeming absence of robust self-assessment in the aftermath of such high-profile events. Neither of these dynamics is consistent with best practice.

Moreover, while KDPS was responsive to our initial data request, we noted items that were missing or areas where we needed more clarification or data as we conducted our evaluation.⁶⁶ This is not uncommon in our reviews; they are usually an iterative process during which we work with departments collaboratively as we discover new areas for review or seek more specific, or, at times, more holistic data. And, in our experience, departments are typically accommodating of this process. We found KDPS to be less so.

It is difficult to put our finger on the reasons for this; while the chance to visit Kalamazoo in person would presumably have been beneficial in this and other respects, we have managed to establish better lines of collaboration in other jurisdictions since the pandemic began. While it did not seem at all malicious, it was consistent with what we perceived to be a wary, “letter of the law” mindset rather than a candid sharing of ideas. This, in turn, matched the experience of several people that we talked to about interacting with KDPS: a certain insularity, unease with transparency, and reluctance to acknowledge even the possibility of fault.

Law enforcement is often required to make difficult decisions under dynamic circumstances and with incomplete information. Some of these don’t work out as well as they might have. And while this can be disappointing (or worse, when it comes to the outcomes of critical incidents), our experience is that the general public does not expect perfection from the police. Its confidence, however, does depend in part on a sense that the police are going to be both accountable and determined to make appropriate adjustments when lapses do arise.

Given the extremely unusual volume and intensity of the challenges law enforcement faced nationally last summer, it stands to reason that a measure of mistakes, missteps, and misjudgments would be inevitable – even for well-trained agencies with good intentions and a sensitivity to the dynamics of the

⁶⁶ For example, we initially asked for “All Arrest Reports” related to the summer unrest. When we began to analyze the arrests, we noted that some reports were missing and requested these. The Department then sent more but not all. When we asked for body-worn camera footage, the Department provided limited clips. It was not until much later in our review that we discovered that body-worn cameras were largely not activated on the first days of unrest – and that the Department addressed this by Tuesday evening June 2. Had KDPS explained that to us at the outset, it of course would have been helpful.

moment. Moreover, these very unique, multi-faceted operations lent themselves to productive scrutiny even when goals were achieved effectively.

We very much recommend an approach that receives and grapples honestly with outside feedback, and that embraces both accountability for past performance and a commitment to benefitting from lessons learned.

We present this section with the knowledge that the City commissioned our Report in late 2020 and that part of KDPS's reticence toward internal review is attributable to its awareness of or deference to any outside findings. But we often urge departments to continue their own internal review procedures after large-scale incidents, regardless of whether a third-party is conducting a review. While KDPS did conduct some internal evaluation of their performance after the summer unrest, we found it to be less robust and reflective than might be expected.

Internal After-Action Reports

An "After-Action" report is a document authored by an incident commander after a large-scale incident to evaluate the agency's performance against the Operations Plan and provide lessons learned for future events. KDPS provided OIR Group with three, Crowd Management Team-specific After-Action reports: one reviewing the events of June 1, one for June 2, and one for August 15.

The After-Action reports do not delve into any broader issues relating to planning or questions about what could have been done better (though some of the recommendations suggest a degree of self-scrutiny and attention to future preparations). They are each three-page documents that describe the incident background, crowd movement, and the actions and direction of the CMT squads once deployed.

The reports make various recommendations in a cursory fashion, most of which are related to officer wellness (using vans for transportation, keeping water/electrolytes in a nearby supply vehicle and paying greater attention to nutrition, for example) and equipment issues (purchasing masks with laser protection and Velcro call signs to attach to helmets, for example).

RECOMMENDATION 35

In addition to unit-specific reports, KDPS should consider a more robust and comprehensive, Department-wide After-Action review process that evaluates incidents in a more holistic fashion with an eye toward future incidents.

Ironically, one of the more substantive insights that was produced in June did not apparently carry over into the strategy for August 15. The relevant recommendation (from the June 2 After Action Report) was the following:

Have arrest teams mobilized and closer to the Crowd Management Team, so that when the group is dispersed into smaller units, the arrest teams can quickly make apprehensions preventing the group from re-organizing and becoming one large group that needs to be dispersed again.

This recommendation is substantive, reflective, and provides guidance for staging and deployment planning in future events. But the Operational Planning for August 15 has us question if this recommendation, or others in the After-Action Reports, were considered when creating the Operations Plan for August 15. The recommendation suggests that the CMT was deployed “too far” to be effective on June 2; we noticed the same staging issue on August 15 (CMT, and other KDPS units, were staged clear across Arcadia Festival Site, instead of near Water Street where the Proud Boys were marching).

RECOMMENDATION 36

KDPS should create a system to track After-Action Report recommendations to ensure that those recommendations are implemented and/or considered in future incidents.

PowerPoint “After Action” Presentations

As stated in our Methodology section, the Department also prepared and facilitated two PowerPoint presentations. We found the presentations, which lasted over three hours each and included media evidence, and the related PowerPoints, to be extremely detailed and informative. These presentations provided a much-appreciated foundation for our review.

At the same time, though, we noted a conspicuous lack of self-criticism or even self-questioning. Without disputing the veracity of any information that was shared with us, it appeared to be presented somewhat selectively, and with the intention of justifying as much as summarizing or explaining.

For example, in the presentation regarding June's activities, there was a heavy emphasis on inflammatory social media postings, and video clips from June 1 into the morning of June 2 highlighted individual acts of criminality – without showing the broader context or assessing some of the more controversial force deployments. Even the video clip that depicted officers using chemical munitions on prostrate crowd members was captioned “Subjects throwing objects at Police.”

As for the presentation regarding August 15, KDPS provided extensive social media clips posted by the church leader to “prove” that he intended to incite anger and violence among his congregants – thereby reinforcing the Department's outsized insistence on finding fault with him. We also noted seemingly biased language used during the presentation, with KDPS calling the Proud Boys' march “First Amendment rights” and the actions of the counter-protesters “civil disobedience,” and commenting on the restraint and coordination of the Proud Boys as they marched in military formation in direct contrast to the “aggression” of the counter-protesters. While KDPS representatives were consistent about repudiating the Proud Boys' ideology, this framing of events showed a lingering reluctance to grapple with public perception.

The presentations ended with a strong averment by one Department leader that KDPS and its then-Chief did not do anything “wrong” during any of the Department's responses to the challenges of last summer. And this sentiment was reinforced throughout our interactions with KDPS leaders, during which they showed little inclination toward a retrospective reassessment of its decision-making from last year.⁶⁷ Indeed, even the very public apology for

⁶⁷ We do acknowledge elsewhere, KDPS' thoughtful self-devised suggestions for improvement, found in their summer 2020 After Action Reports, in areas of communications and equipment but more could and should have been done in this arena so that the incidents are viewed after the fact through the prisms of accountability, tactics, training, policy and supervision.

arresting the reporter was largely “walked back” in our discussions with KDPS: we were told that the Department in fact had every right to arrest him.

While as we set out in this report, complicated decisions faced by KDPS last summer cannot usually be catalogued as “right” or “wrong,” a Department that is willing to say that we could have done better in this or that area will also be better able to retain credibility and trust from its community. A police agency that is willing to accept criticism and admit to fallibility is also better situated to learn and improve from difficult challenges.

Force Review

As we detail in our Use of Force section, above, KDPS did not employ a robust and detailed force reporting process. We also noted that, in May and on June 1, KDPS officers did not activate their body-worn cameras. With such little evidence, then, one might expect that conducting a traditional force review process, by which Departments evaluate uses of force to determine if they are within policy, would be difficult. And many jurisdictions faced this challenge: it was extremely difficult, if not impossible, to conduct force reviews.

But KDPS reported that it did, in fact, conduct internal force reviews for every officer that reported force over the summer of 2020. And their review found all uses of force to be “in policy.” KDPS did not report any recommended counseling or training for officers that used or were involved in force.

Unfortunately, despite repeated requests, KDPS did not provide OIR Group with these internal force review reports. As such, we could not evaluate their process or the outcome.

Complaints

KDPS provided six complaint files related to the protest activity in May/June and no complaint files related to August 15.

Based on the limited information we received, we noted concerns with the way these six complaints were handled. In these cases, KDPS significantly deviated from their usual complaint review process, outlined in detail in Department policy 1011, “Public Safety Community Relations and IA Complaints.”

First, in one case, KDPS combined over 20 complaint emails from different complainants with different allegations into one complaint file. These ranged from allegations of officers not wearing Personal Protective Equipment (masks and gloves) to excessive force for use of tear gas and rendition-style tactics used in the Vine Neighborhood. While some complainants used the same language to describe various circumstances, indicating some level of collaboration, it is not a best practice to combine various complaints into one file. This file did not contain any further investigatory material, nor were they closed with response letters to complainants.

RECOMMENDATION 37

KDPS should handle each complaint as a unique matter, unless there is clear rationale for combining complaints into one file, which KDPS should document and communicate to the complainants.

RECOMMENDATION 38

KDPS should ensure that at the end of any complaint investigation, complainants are advised of the findings.

Second, correspondence in the remaining files suggested that KDPS has not investigated the complaints using their usual internal process through the Office of Professional Standards:

- The second and third files contained a letter from a command staff member to the complainant dated June 23, 2020, stating that the City had resolved to hire an independent outside investigator.
- The fourth and fifth files contained a letter dated early June 2020, stating that KDPS's Office of Professional Standards would conduct an investigation and notify the complainant of the result in 45 days, and a follow-up letter, dated January 5, 2021, that provided the complainant OIR Group's contact information..⁶⁸
- The sixth file contained no correspondence from KDPS to the complainant; however, the complainant contacted OIR Group and

⁶⁸ OIR Group's scope of work for this project did not include a formal complaint investigation process.

stated that he had also received a letter regarding OIR Group's role. This correspondence made him wary of the complaint process because he felt that KDPS would not properly review his case using their internal process.

While we do not know the present-day status of these complaints, the dearth of investigatory materials in the files received by OIR Group in early 2021, suggests that KDPS has not completed any formal complaint investigations.⁶⁹

If we are correct in that assumption, we urge the Department to complete the complaint investigations using their formal process.

RECOMMENDATION 39

KDPS should follow its formal complaint review process for complaints regardless of any third-party evaluation.

RECOMMENDATION 40

KDPS should complete formal investigations of all complaints filed by members of their public and communicate the results to complainants.

Taken together, these internal review systems leave a collective impression of unfulfilled potential. Because we don't have a frame of reference regarding KDPS's usual practice and the quality of its different mechanisms for self-assessment, it is difficult to say whether this shortcoming is unique to last year's special circumstances or representative of a larger need.

What we can say is that we have long maintained that police agencies themselves ideally take *the* leadership role in evaluating their own practices, addressing their own lapses at the individual or systemic level, and devising their own reforms. Experience, training, and expertise matter. And officers at all rank levels are more willing to accept necessary changes and accountability measures when the department itself is responsible for them – rather than having them imposed by outsiders.

But as much as rigorous internal review matters, it should also be accompanied by a strong “outward facing” engagement. This includes a

⁶⁹ The basis for this inference is the fact that we did not receive any completed complaint investigations.

willingness to share information, acknowledge problems, and maintain receptivity to community priorities and preferences. And it is needed more than ever in the current environment of reform.

KDPS had seemingly taken steps in the years prior to 2020 that reflected a commitment to progressive, community-oriented policing. And the Department representatives whom we met certainly seem capable of achieving the sorts of internal and external relationships we advocate with regard to review processes. We hope this Report will be a stepping-stone in restoring those ties and enhancing those relationships.

Conclusion

This Report is obviously meant to reflect our understanding of events in Kalamazoo last summer, and of the dynamics within KDPS and in the City that helped to shape them. It is no coincidence that our final product is lengthy and somewhat complicated. The relevant events themselves had many facets that contributed to their respective outcomes, and supporters and detractors could each find ample factual bases – both at the time and in these pages – for their attitudes toward the Department’s performance.

The competing baseline narratives that emerged last year were (like many baseline narratives) more definitive than nuanced. On the one hand: “KDPS enforced the June Black Lives Matter protests with unwarranted aggression and undue restrictiveness, and then mishandled the Proud Boys march through a combination of troubling inaction and belated, misdirected enforcement. Its bias speaks for itself and needs to be addressed.”

And on the other: “KDPS took pains to facilitate peaceful protest in late May and June. But it was also obliged to prioritize public safety and to guard against the dangerous, destructive behavior that had undermined demonstrations in the region and that made its way to Kalamazoo on Monday night. Mindful of the resulting criticism and determined not to exacerbate tensions with its own presence, it adopted a strategy for the Proud Boys march that was created in good faith but undermined by the misrepresentations of others and the violence instigated by counter-protesters. KDPS helped Kalamazoo weather the summer’s unrest relatively safely and deserves credit.”

As is often the case, and the Report is meant to illustrate, we found elements of validity in both characterizations, while coming to the conclusion that the “truth” was somewhere in the middle.

The period from May 30 to June 2 was genuinely challenging for all the reasons we cite above – and KDPS is rightly proud that the extreme problems faced by other jurisdictions were largely contained in Kalamazoo. But some of its decisions – and individual aspects of its enforcement strategy – were also clearly questionable in ways that it should grapple with more comprehensively.

The Proud Boys event on August 15 was a difficult one for the Department to handle effectively, insofar as downsides to every prospective approach did exist. However, while we have no evidence that malice or support for Proud Boy ideology was at the root of KDPS decision-making, the “optics” of those hours as they unfolded were understandably troubling, and elements of the KDPS operation remain puzzling to this day. Again, it would behoove the Department to both hear and listen to the feedback the day engendered, and to work toward better dynamics of communication and coordination with stakeholders in the planning, execution, and aftermath of significant crowd management responses.⁷⁰

Our work concludes with two key components for the immediate future that we hope to see realized by the City’s leadership, the Kalamazoo community and KDPS. First, an increased recognition by all interested parties that the realities of last summer were more complicated than some believed, that KDPS did many things creditably and without a discriminatory motivation, *and* that room for improvement certainly existed – as is almost always the case with police agencies or any other organization in the aftermath of critical, high-profile incidents. Second, a commitment by KDPS to enhance its many strengths as an agency through greater emphasis on public engagement and transparency, and through a more robust culture of self-scrutiny and internal review.

We appreciate the opportunity to have gotten to know Kalamazoo through this project and extend our thanks and best wishes to all who assisted us and shared their insights.

⁷⁰ We commend the work that the City Commission’s Sub-Committee has already framed in this regard.

APPENDIX A: Recommendations

- 1: In determining arrest strategies in a crowd control management context, KDPS should focus on contemporaneous misconduct such as assaultive and/or destructive behavior, rather than other potential justifications such as outstanding arrest warrants.
- 2: KDPS should work with other City officials and community representatives to assess its strategy for addressing criminal misconduct in the context of larger scale unrest, so that those responsible for assaultive and criminal conduct are targeted and those who are exercising their First Amendment rights are not impacted by less selective approaches such as tear gas.
- 3: KDPS and the City's leadership should examine its tactics in engaging with the curfew protest group on Tuesday evening, and consider the applicability of coordinated arrests as a potential alternative tool to chemical munitions.
- 4: KDPS should modify its policy to ensure that field supervisors are consulted before officers arrest or detain journalists or legal observers for violations of police zones, curfews, or other nonviolent offenses in the context of protests or demonstrations.
- 5: KDPS should provide training to supervisors on the need to exercise discretion prior to approving arrests of journalists and legal observers for nonviolent offenses in the context of them covering protests or demonstrations.
- 6: KDPS should develop policy or protocol prohibiting Office of Professional Standards personnel from submitting reports in support of prosecution based on their investigation of public complaints of misconduct made against officers or other KDPS personnel.

- 7:** KDPS and the City's leadership should engage with the community as it considers the circumstances required to declare a police zone in the context of crowd management. The resulting guidelines should be publicized in a way that provides City residents and stakeholders a clear understanding of under what circumstances KDPS will declare a police zone in response to protest activity.
- 8:** KDPS should utilize their vehicle PA system or alternative audio system to clearly and loudly communicate with crowds, especially when issuing dispersal orders or other instructions.
- 9:** KDPS should create written protocols to ensure that any dispersal orders or other instructions to the crowd are recorded and documented proof that such orders were effectively given.
- 10:** KDPS and the City's leadership should develop principles around when imposition of a police zone is appropriate in the protest context.
- 11:** KDPS should evaluate its policy and training around police zones to ensure sufficient emphasis on flexibility and continual re-assessment of exigencies and other circumstances.
- 12:** KDPS, in collaboration with its community, should determine a clear protocol for dispersal orders with the goal of gaining voluntary dispersal prior to issuing formal dispersal orders.
- 13:** KDPS should ensure that its personnel are regularly briefed and advised on its policy requirement that any dispersal orders instruct the crowd on appropriate dispersal routes.
- 14:** KDPS policy and training regarding dispersal orders should be revised to require personnel officers to include express warnings about the potential use of force should the order be defied.
- 15:** KDPS should publish a new dispersal order and "notices of intent" to include clearer and more detailed instructions in their public announcements, include the new language in Department policy where applicable, and train officers regarding this new language.

- 16:** KDPS, in collaboration with its PIO and the City’s leadership, should continue to work on the above-listed public communication strategies related to crowd management and, when complete, communicate these to its community and train officers accordingly.
- 17:** KDPS should continue to develop effective tracking mechanisms for less lethal munitions, including the munition bag recommended in its After Action Report and a tracking log, specifically to track how many of which types of munitions are used and by whom.
- 18:** During the planning and debriefing phase of any anticipated First Amendment protest activity, KDPS should stress the need to effectively report uses of force and the effective use of body-worn cameras and include those tasks in any operations plans.
- 19:** KDPS should consider ways to prioritize and facilitate effective and comprehensive reporting related to uses of force by its personnel in the specific context of crowd management/crowd control, so as to overcome some of the inherent challenges to timeliness and specificity.
- 20:** KDPS should formally address the wide-scale lapses in adherence to the body-worn camera policy that occurred during the May 30 to June 2 operational period.
- 21:** KDPS should revise its use of force policies to either specially define “riotous” or eliminate the terminology from its policies.
- 22:** KDPS should work with City leadership and community representatives to establish the circumstances for which different crowd control techniques should be authorized.
- 23:** KDPS should review its overlapping policies in the arenas of First Amendment assemblies, specific force options, and crowd control to ensure consistency and address existing ambiguities.

- 24:** KDPS should conduct a detailed analysis regarding whether the use of control devices, including pepper balls, on June 1 and 2 was consistent with Department policy and expectations.
- 25:** KDPS should assess its deployment of pepper balls toward individuals who are laying on the ground with an understanding of how that creates the potential for striking the head.
- 26:** KDPS should assess its policies and training regarding appropriate force deployments on passive individuals who are laying on the ground.
- 27:** KDPS should revisit its policy on the use of tear gas to better define – and narrow – its authorization in the crowd control context, and to require a level of aggressive action on the part of crowd members prior to deployment.
- 28:** KDPS should consider increased transparency practices related to uses of force or other high-profile incidents, such as releasing requested body-worn camera footage to the public as soon as practicable.
- 29:** The City should work to create a protocol for ensuring adequate safety and support to responding agencies as they respond to large-scale events, looking to the experiences of other cities as possible models.
- 30:** KDPS should implement a system to track the deployment and count of responding mutual aid personnel in real-time.
- 31:** KDPS should develop a mutual aid agreement with partner agencies that, at a minimum, requires assisting agencies to document and share information regarding incident reports, arrest reports, and uses of force.
- 32:** KDPS should, as part of their after action review process, request and receive the after action or incident reports from any agency that provided mutual aid, both to inform their internal review and determine if any future action is needed.

- 33:** The City's leadership should work with KDPS and its community to establish agreed upon guidelines for when to call in the National Guard and publicize these to the community in advance of future events.
- 34:** KDPS should reach out to other law enforcement agencies who experienced similar civil unrest in the summer of 2020 and review after action reports from other jurisdictions to identify best practices that could be imported to Kalamazoo in responses to future protest activity.
- 35:** In addition to unit-specific reports, KDPS should consider a more robust and comprehensive, Department-wide After Action review process that evaluates incidents in a more holistic fashion with an eye toward future incidents.
- 36:** KDPS should create a system to track After Action Report recommendations to ensure that those recommendations are implemented and/or considered in future incidents.
- 37:** KDPS should handle each complaint as a unique matter, unless there is clear rationale for combining complaints into one file, which KDPS should document and communicate to the complainants.
- 38:** KDPS should ensure that at the end of any complaint investigation, complainants are advised of the findings.
- 39:** KDPS should follow its formal complaint review process for complaints within the statute of limitations, regardless of any third-party evaluation.
- 40:** KDPS should complete formal investigations of all complaints filed by members of their public and communicate the results to complainants.

APPENDIX B: Less Lethal Munitions Defined

In the interest of informing those who may not be familiar with less lethal force options used by KDPS over the course of this summer unrest incident, we provide the following definitions.

- **Tear gas.** This term is applied to two different types of chemical munitions. KDPS used some of each type in May/June and on August 15. The first is Oleoresin Capsicum (OC) gas, commonly referred to as “OC” or “pepper gas.” OC gas is an inflammatory agent derived from the oil of hot pepper plants, which causes heat, redness, and swelling to the skin and irritation to the nose and eyes. The second is Ortho-Chlorobenzalmalononitrite (CS) gas, or what most people refer to when they say, “tear gas.” CS gas is an irritant, which causes intense stinging to the eyes and respiratory system.

CS and OC gas was disseminated using one of three methods. The first method was via a hand-held grenade that contained canister(s) of the gas that released in increments.

OC gas (spray) was also deployed using a handheld aerosol “fire extinguisher”-looking device called an MK-9, which is larger than traditional OC spray carried by officers and typically used in crowd management situations.

CS gas was also deployed via a launcher, sometimes referred to as a “37-millimeter (mm) launcher,” which looks something like a shotgun. In this deployment method, the gas is contained in canisters within a single shell that is ejected from a launcher. The canisters deploy in rapid sequence. This method is used to shoot the gas canisters to a farther distance.

- **Smoke.** KDPS officers also deployed several canisters of smoke. This less lethal tool disseminates white or colored smoke and is typically used by law enforcement for distraction or concealment during an operation. On June 2, KDPS used a green smoke canister.

Sometimes, departments use smoke to increase the effect of the tear gas because the smoke can trap and suspend gas for a longer increment of time but KDPS did not report that this was their rationale for using smoke. While it is non-toxic, smoke can sometimes cause dizziness or a choking sensation.

- **Pepper projectiles** from an **MLR**. These are small, powder-filled projectiles that are shot from a launcher similar to that referenced above. These are meant to be target-specific; upon impact, they cause pain and saturate the area with the enclosed powder. KDPS used pepper balls that contained OC powder, which, like the gas, is an inflammatory agent.