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Executive Summary

Summarize major points and recommendations when we’re done

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early decades of the 20th Century. Since the early 1990s, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. More recently, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have generated concern in the community. The Citizen Review Committee’s Crowd Control workgroup issued a report outlining concerns about the Bureau’s crowd control techniques. They recommended changes in twelve different areas including use of sound trucks, expansion of training, displaying name badges, establishing stronger community relations, releasing seized property, and more transparent processes around event permitting, police operating procedures, and expectations prior to events.

In 2015, the IPR Director also submitted a memo to the Police Chief outlining concerns that complainants expressed related to the Portland Police’s response to Michael Brown/Black Lives Matter protests in the previous year. Complainants indicated concerns regarding aggressive police tactics precipitating use of force, contradictory police commands to protestors, motorcycle and bicycle officers striking individuals with their vehicles, officers using batons, and officers aiming less-lethal weapons at protest participants.

The results of the 2016 Presidential election instigated a series of protests in Portland. During the early months of 2017, large events demonstrations protesting the policies of the new federal administration occurred on Inauguration Day, President’s Day, and May Day also gained significant attention leading into the summer, leading to multiple confrontations between police and protestors.

Early 2017 also saw the rise in confrontations between right-wing and nationalist groups. The right-wing activist group Patriot Prayer scheduled a number of protests in Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose these cities to "liberate the conservatives on the West Coast."

In late April, Patriot Prayer held a "March for Free Speech" rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three left-wing protesters were arrested during the march. Portland Police ultimately provided TriMet buses for the conservative right-wing protesters to leave the event, an act which was perceived by many...
community members some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX light rail train when the men attempted to intervene when an individual started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, the man who later committed a racially motivated double homicide and attempted murder on a TriMet MAX train in May, was charged with two counts of aggravated murder, attempted murder, and other related charges. It was soon learned that Christian had attended the April 2017 Patriot Prayer event and had been videotaped giving Nazi salutes and referring to counterprotesters by racial slurs prior to being escorted away by Portland Police officers.

After the murders and stabbings on the MAX train, many called on Patriot Prayer to cancel its “Free Speech Rally” set for June 4th at Terry Schrunk Plaza downtown Portland. Community members saw the event as Islamophobic and had been association with Patriot Prayer and the fact that the victims were murdered and wounded while defending two Muslim teenagers prior to being escorted away by Portland Police officers. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for the “Free Speech” rally organizers to cancel the event. As Terry Schrunk Plaza is a small park on federal property, Mayor Ted Wheeler also requested the federal government revoke the already approved permits for the rally, which was denied citing free speech concerns. The government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer indicated they would not cancel their protest event. A number of organizations, including union groups, interfaith groups, and Rose City Antifa, scheduled counter-protests in the same vicinity as the Patriot Prayer rally on June 4th.

Portland Police maintains a Rapid Response Team

The Portland Police Bureau formed the Rapid Response Team in 2001, an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive significant training in Police Bureau approved crowd control tactics, and maintain a regular duty assignment while on the team. Officers undergo an evaluation process before they join the team.

While often described as the Police Bureau’s “riot cops,” the Police Bureau describes its Rapid Response Team as the Police Bureau unit responsible for responding to “mass events,” as its unit equipped to handle mass incidents. Besides mass protests or demonstrations, the Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain with a lieutenant serving as the executive officer and divided into several squads, each commanded by a sergeant. In addition to its own resources, the Police Bureau maintains interagency agreements with other law enforcement agencies in Oregon and Washington. The outside
agencies will provide assistance, including personnel during a “major incident, natural disaster, or extreme civil disorder.” Some of the law enforcement agencies that the Police Bureau maintains a mutual aid agreement include including the Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office, Clackamas County Sheriff’s Office, Clark County Sheriff’s Office, and several local municipal police departments in Oregon and Washington. Officers from these other agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and squads units from other law agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters. RRT squads wear personal armor protective equipment, use force, and expend less-lethal munitions during these trainings, ostensibly using the same decision-making process used during responses to actual protests and other incidents.

**PHOTO OF RRT MEMBERS**

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, protective armor, helmets, smoke canisters, gas canisters, and less lethal weapons, including 40mm and .68 caliber launchers. Police and community members often use different terms to describe this equipment. As an example, many community members describe squads in armor, helmets, and gas masks as “riot cops” while officers describe this as personal protective equipment.

In addition to Rapid Response squads, the Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. The Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

Rapid Response Team deployed on June 4th

Portland Police said they do a substantial amount of “intelligence work” prior to events. They try to find out which groups may be attending, and gauge the tenor of conversation around the event to decide if attendees may be violent. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event. Portland Police were concerned about the substantial conflict around events involving Patriot Prayer both in Portland and in other cities and decided to heavily staff the June 4th event so they had the resources to ensure public safety. The Rapid Response Team deployed on June 4th consisted of Portland Police, Multnomah County Sheriff’s Office and Oregon State Police officers.

Police Bureau personnel said they do a substantial amount of planning and preparation—“intelligence work”—prior to event a demonstration or rally. For the June 4 event the Police
Bureau was concerned about the high risk of violence due to clashes at previous local rallies between individuals affiliated with Patriot Prayer and local anarchists and Antifa members.

Over 200 Police Bureau officers were deployed in response to the rally in variety of functions from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

**Police Bureau Attempts to Contact Protest Participants**

Prior to an event, the Police Bureau will attempt to find out which groups may be attending, and gauge the tenor of conversation around the event to decide if attendees may be violent if there is a potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4th protest and counter protests. In the weeks leading up to the incident, this sergeant monitored open source social media platforms, and noted multiple individuals associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. This raised concerns due to previous protests in other cities had devolved into physical clashes between opposing groups.

The Special Events Sergeant contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant obtained assurances from multiple people that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4th. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group, and to express their concerns verbally, not physically.

On June 4th, the Special Events Sergeant tried to remain in regular contact with all groups present largely by text message. People associated with the Patriot Prayer group and some counter-protest groups exchanged many text messages with the sergeant, and coordinated the response of their own security staff based on information provided by the sergeant. People associated with Antifa exchanged fewer text messages with the sergeant. When the sergeant told them counter protesters in Chapman Square were throwing items such as bricks and water bottles at the police, the organizers denied it.
Portland Police were concerned about the substantial conflict around events involving Patriot Prayer both in Portland and in other cities and decided to heavily staff the June 4th event so they had the resources to ensure public safety. The Rapid Response Team deployed on June 4th consisted of Portland Police, Multnomah County Sheriff's Office and Oregon State Police officers.

***Infographic – RRT makeup on June 4th***

Different Groups Assembled in Parks

Downtown

Downtown Parks

Terry Shrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon street. The parks are bracketed by SW 3rd and 4th Avenues.

Terry Schrunk Plaza is a small park located between Portland’s City Hall to the west, and the federal Edith Wyatt-Green Building Portland’s federal building to the east. Schrunk Plaza is not a City park, but is instead owned and administered by the federal government. Another park, Chapman Square, sits directly to the north of Schrunk Plaza, across SW Madison Street. The Portland Building sits to Chapman Square’s west across SW 4th Avenue, while the federal courthouse Justice Center is sits to the east, across SW 3rd Avenue. Yet another park, Lownsdale Square, sits to the north of Chapman Square, across SW Main Street. The Multnomah County Circuit Courthouse sits to the west Lownsdale Square’s west, while the Justice Center Mark Hatfield United States Courthouse sits to the east.

These three parks and the streets around them formed the location of most of the events of June 4th.

Rapid Response officers were positioned at Chapman Square and in front of City Hall. Right-wing protesters, including members of Patriot Prayer Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Schrunk Plaza.

There were three locations for those interested in protesting the Patriot Prayer Rally. A group of counter-protesters, including members of Rose City Antifa, gathered across Madison Street in Chapman Square. Union groups A counter protest organized by labor unions collected in front of the Wyatt-Green Federal Building on SW 3rd across the street from Shrunk Plaza. A coalition of individuals called Portland Stands United Against Hate congregated in front of City Hall, and Interfaith groups congregated near the Justice Center.

Those planning the Police Bureau’s response to the June 4 rally identified “four distinct groups”
prior to the protest, and those in Chapman Park were “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. In Chapman Square, the Police Bureau estimated that roughly 150 “anarchists” would be present. The counter protest at City Hall was estimated that it would have between 500-600 persons in attendance.

**MAP**

Jurisdictional issues complicated the planning for the event and the public perception of the Police Bureau’s response. Federal Protective Services was positioned at Terry Schrunk Plaza. Community members may have thought Federal officers were part of the Rapid Response Team and receiving direction from Portland Police command staff under the control of the Police Bureau. Portland Police Bureau staff stated that Federal Protective Services was involved in the pre-planning but emphasized that Federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last significant time they worked with Federal Protective Services was in 2013 during Occupy Portland.

**Rundown of events up to the Kettle Officers Clear Chapman Square**

Shortly before noon on June 4th, Rapid Response Team squads formed skirmish lines around Schrunk Plaza, to separate groups from each other. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Schrunk Plaza. During the rally, some members of each group individuals located in Chapman Square and Schrunk Plaza yelled and cursed at members of the other groups. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized the contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

The Police Bureau used its sound truck to broadcast several warnings, directing individuals within...
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the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the announcements made by the sound truck, as well as the times they were broadcast.

At 12:32pm, the Police Bureau sound truck made the following announcement:

This is the Portland Police Bureau streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

The warning was provided seven times between 12:32pm and 12:53pm.

Just after 1:00 pm, officers located on SW Madison between Schrunk Plaza and Chapman Square claimed individuals in Chapman Square began throwing objects toward officers and participants in the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, apparent bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

Between 1:02 pm and 2:44 pm, the sound truck broadcast ten times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that offenders would face arrest and the “park may be closed.”

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. A review of documents and video from community and police sources indicate that there were few issues at the counter protests held at City Hall and in front of the Wyatt-Green Building.

Police used their Long Range Acoustic Device (sound truck) to broadcast warnings, directing people to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the various announcements made by the sound truck, as well as the times they were broadcast. Initially, police announced that the south side of Chapman Square was closed. Police eventually broadcast warnings stating all of Chapman Square, and later all of Lownsdale Square, were closed.

At 3:15 pm, the sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square. Multiple protesters did not respond to the broadcast, but instead remained in Chapman Square. At approximately 3:30 pm, Rapid Response officers advanced to the north, toward Chapman Square. As they advanced, officers gave verbal warnings to clear the area. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the

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At 3:27 pm, the sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

At approximately 3:30 pm, members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

Between 3:30 pm and 4:14 pm the sound truck announced multiple times that initially Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north.

Officers continued to move protesters to the north, out of Chapman Square. When officers stopped their advance upon reaching the north side of Chapman Square, they stopped. A group of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. The group estimated as roughly 200-300 persons, was declared an unlawful assembly at 3:51 pm. After approximately 15 minutes, this group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

Mass Detention at SW 4th and Morrison

At 4:21 pm, a group of counter protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police. The marchers were detained mid-block between SW 4th between SW Morrison and Alder. A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th Avenue while a Police Bureau RRT squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander for the purpose of investigating the crime of disorderly conduct. The detention was ordered after the incident commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the NE corner of the intersection of SW 4th and Morrison when a state trooper deployed less lethal pepper balls at a small group that attempted to escape the containment by climbing up a parking garage stairway wall in an attempt to flee arriving officers. The group was apprehended by officers and identified. Those
detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.

Those detained where not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of the detained individuals, most of were released without charge. The mass detention lasted approximately one hour. Then Police Bureau Chief Marshman later wrote that photographing the identification of detained individuals was made to “speed up the process.” A review by IPR of police reports filed by members of the Field Arrest Teams indicates that 389 individuals were photographed by the Police Bureau while detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, the Oregonian, the Willamette Week, the Portland Tribune, and Vice Media. The journalists were processed in a similar process as the protestors and were required to be photographed and show identification prior to being released.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. Rapid Response Team squads relocated closer to Schrunk Plaza, as the Patriot Prayer Rally was ending. Police broke up scuffles between various groups of protesters, as people left the area.

Community Concerns

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to Police Bureau operations and policy but they felt that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protestors, media and bystanders who were detained.

After the June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns. 
of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

Eventually, officers boxed in, or kettled, members of the protest march near SW Morrison Street and SW 4th Avenue. Other Rapid Response squads relocated closer to Schrunk Plaza, as the Patriot Prayer Rally was ending. Police broke up some fights between various groups of protesters, as people left the area.

Some accusations of favoritism by police of favoritism

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Multiple community members believed that protesters in Chapman Square were kettled removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, Rapid Response Team Lieutenant indicated protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.” They Police Bureau personnel indicated Rose City Antifa was therefore unable to communicate with the Rapid Response Protest Liaison Officer prior to June 4th.

The lieutenants indicated protesters were separated into “four distinct groups” prior to the protest, and those in Chapman Park were “more confrontational” and more “volatile” in comparison to the other three groups. They said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the union and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa. One lieutenant felt the right-wing protesters were “much more mainstream” than the left-wing protesters, with a group that was diverse in their viewpoints and tactics.

An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” Portland Police are also authorized to confiscate property for “safekeeping or the prevention of crime.” Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime. There is no specific instruction for property confiscation by police at a protest in PPB directive 635.10—Crowd Management/Crowd Control. After Action Reports from June 4th indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where it was then
Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square but not from other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giants flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” “safekeeping or the prevention of crime.” Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

Prior to the June 4 rally, the Police Bureau issued a press release noting its concerns for potential of violence and warning that weapons and items that could be utilized as weapons could be seized:

_There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally._

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner at a later time, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

Attempting to contact groups prior to an event is a prudent measure but Portland Police should be aware that leaderless or less hierarchical groups are not inherently more dangerous and should...
not necessarily be treated differently solely because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a social media presence as well as sending out regular press releases, but having a website for specific events that could include relevant statutory authority as well as disseminate in real time sound trucks warning, concerns about crowd behavior, and actions taken by officers.

**Recommendation:**

For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

**Photos of property taken**

**Person Associated with Patriot Prayer Assists in Arrest**

Multiple community members contacted IPR with their concern about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer, Federal Protective Services arrested, arresting a left-wing protest counter. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, with the assistance of a militia member who was part of the Patriot Prayer, which fed into contributed to the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals right wing militia members connected to Patriot Prayer “were working with police” in order to curtail the rights of left wing protest counter protesters.

Former Police Chief Marshman was asked for the official Police Bureau policy on interacting with right-wing militia groups in a June 6th radio interview. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” Chief Marshman indicated Portland Police Bureau Officers members “definitely encourage people not to get involved.”

**Protesters were kettled near Chapman Square**

Eventually, officers boxed in, or kettled, members of the protest march near SW Morrison Street and SW 4th Avenue. Other Rapid Response squads relocated closer to Schrunk Plaza, as the Patriot Prayer Rally was ending. Police broke up some fights between various groups of protesters, as people left the area.
On June 4, 2017, officers contained protesters in Chapman Square after they allegedly threw bricks and water balloons full of feces and urine at officers.

Police Use of a Kettle/Box-In

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protestors at SW Fourth Avenue and Morrison Street. Kettle\(^1\) is the most common term to describe the crowd control tactic where officers surround a group of protestors and access out of the containment is controlled by law enforcement. Activist groups and media generally call this tactic a kettle. The Police Bureau generally refers to the tactic as a box-in or containment. This tactic is commonly referred to as “kettle” (also be referred to as a “Box-in” or “Containment”). During kettling, police officers surround protesters and keep them in a certain place until police decide that they are free to leave. The kettle or box-in, kettling is utilized by domestic and international police departments and kettles can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March, and the 2017 US Presidential Inauguration in Washington D.C.

The first documented use of the tactic in Portland involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die in” in front of the Justice Center at SW 2\(^{nd}\) and Main. Officers proceeded to surround the demonstrators on all four sides the demonstrators in the intersection and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by the individuals arrested for its inability to prosecute.

**MAP** show where kettling occurred

The kettle/box-in is controversial among activists for a number of reasons. One of the most pressing concerns is the possible mass detention of bystanders who were not involved in any disruptive or illegal activity. There is active legal debate whether protesters who are kettled are under arrest, being temporarily detained, or being held in constructive custody. There is also a fundamental disagreement between those who believe that kettling police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment. The tactic may also present safety concerns because officers enclose protesters at very close proximity either party could become overwhelmed or outnumbered.

Former Rapid Response Team Incident Commander and retired Portland Police Captain Vince Elmore indicated A former Police Bureau incident commander indicated a box-kettle was-in is often difficult to execute, a difficult process because of its complexity and timing adding that, “if you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in 1 Kettle derives from the German word Kessel, which translates as either kettle or cauldron. A kettle also describes a military tactic, where a large force will surround an opposing force, separating it from external support and the surrounded force is eventually made ineffective as a fighting force.
under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes
difficult.” Reports from June 4th indicate that the kettle lasted over an hour. Elmore indicated he
never used the box-in, preferring a police tactic called arrest circles as an alternative.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surround
the protestors on all sides. The built environment of downtown Portland aided the officers in
containing the marchers. Those detained at SW Fourth and Morrison had officers to the north and
south, with buildings confining the group’s heir movement to the east and west. Eventually
additional officers responded to assist with the detention.

The Vancouver (B.C) Police Department, British Columbia’s Major Event Unit indicated that they
do not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

The Rapid Response Team often uses a sound truck to make announcements and give
orders to large crowds. Retired Captain Elmore indicated the announcements are
screened by the Multnomah County District Attorney’s Office to “make sure [police] stay
within first amendment rights.” Community members have said that directions can be
hard to understand and even seem contradictory.

Lewis and Clark Law Professor Tung Yin A law professor was interviewed during a previous
investigation concerning use of the kettle during the 2014 mass detention and arreste. Professor Yin referenced the US Supreme Court Case Terry v. Ohio and indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” He indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” He also indicated the “tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” Professor Yin also indicated officers may utilize their discretion to arrest a certain amount of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

Willamette University Law Professor Laura A Willamette University professor Appleman that IPR
interviewed indicated public safety would take precedence during a protest, and stated officers
would have to make a “split-second” decision whether to detain a large group of people. She indicated officers “think a group is being threatening, then they can either hold them or ask them to disperse.” She indicated community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was no reasonable suspicion to detain
everyone contained in the kettle during the 2014 mass detention. The ACLU of Oregon had
a legal observer who was mass arrested at Chapman Square and. Director Mat Dos Santos indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” An ACLU Attorney Kelly Simon said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle. The controversial tactic was further complicated by the police's
order that protesters were not allowed to leave until they were photographed next to their ID or driver's license.

Those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct, a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that articulates the reasonable suspicion had by officers prior to the detention of the marchers. While video taken by police and civilians at the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there was apparently no police video or reports reviewed by IPR documenting vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding disorderly conduct.

Need for Police Bureau Policy for Mass Detention and Arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau to prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the federal and Oregon Constitutions and all laws. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly charged event and allow for adequate training based on policy.

The lack of a written policy regarding mass detention and arrests additionally deprives the Police Bureau of the opportunity of crafting a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process allows the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, use of involving tactic seen as punitive by certain segments of the population will have to be weighed and the governmental interests it seeks to advance.

Any credible mass detention and arrest policy would need to provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible and what types of warning would need to be provided to demonstrators. The Policy will also have to consider the length of detention and are weather conditions suitable for holding a large group outside? The policy would also have to determine at what point would the Police Bureau have the obligation of providing those detained access to food, water, and restrooms.

Additionally, whenever there has been a mass detention or arrest at a crowd control event, the

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2 ORS 166.025, Class B misdemeanor.
mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Recommendation:

The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action of the event should review whether the mass detention or arrest was appropriately ordered and implemented.

Absent Exigent Circumstances Media or Legal Observers Should Not be Detained

Currently, Directive 635.10(Crowd Control) prohibits the arrest of media and legal observers:

Media or legal observers will not be arrest solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4, were of broad community and even national interest, given the large number of confrontations between members of the alt right and antifa. The police detention of members of the media with no warning calls to question.

Recommendation:

Directive 635.10 should be amended to include a general prohibition on the detention of media and legal observers.

Police Documentation of Mass Events

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers who are usually
Forensic Evidence Division criminalists. The video is often taken from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators.

Within the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. We would echo that suggestion and recommend that in addition to video from individual Rapid Response Team squads there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control videos does not include identifiers such as the time and date taken or identify the videographer. We would recommend that that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, subsequent reviewers or investigators of a crowd control are deprived of a critical contemporaneous record. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Outside agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

**Recommendation:**

*Police Bureau should expand its use of video recordings capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.*

*Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.*

*The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.*

**Police took photos of IDs**

Rapid Response Team officers did not release those detained at SW 4th and Morrison allow...
protesters to leave the kettle until they were photographed next to their identification.

Community members, individuals who were wearing masks or disguises to protect their identity were directed to remove them prior to being released. Rapid Response Team lieutenants Dobson and Lee interviewed by IPR indicated this act was part of an initial investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained individuals and their identification quickly became controversial in some segments of the community. Chief Michael Marshman said in a June 6, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detain individuals on June 4, and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had in fact had been Bureau personnel who had taken the photographs.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This is in part may explain Chief Marshman’s initial statement – in a June 21 memo, the current status of the photographs and whether they were subject to a retention schedule is not yet known. Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” The Police Bureau currently does not have a retention policy for data entered into DIMS. Without a policy declaring otherwise PPB did not publicize if the data had been shared with other agencies, including the National Criminal Data Base, and did not disclose the manner in which the data would be purged. Portland Police had not utilized this tactic at any prior protest.

**Photo of Photographing IDs***

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of individuals and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos taken would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

Mat Dos Santos of the Oregon ACLU, when interviewed by IPR, the ACLU legal director stated his belief that photographing the identification argues that the act of the detained individuals was a violation of a protester’s Fourth Amendment rights, as the taking of the photographs constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and indicated the police violated Oregon State Law (ORS 181.575) which prohibits the collection and creation of files based on people’s political affiliation. Many expressed concern over not knowing if Portland police had retained or shared the photographs and data with other law enforcement agencies.
Other police oversight agencies in number of cities contacted by IPR such as Washington, DC and Berkeley, CA were not familiar with this tactic despite those cities frequency of protests.

Professor Appleman The Willamette University professor indicated she had not heard of any protesters previously being photographed by police for disorderly conduct. However, she indicated the US Supreme Court Case Hiibel v. Sixth Judicial District Court of Nevada ruled that people must submit identification to police when questioned, an act which would not elevate the stop to an arrest. Professor Appleman The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could claim damage had police entered their information into a photo database.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This is in part may explain Chief Marshman’s initial statement. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The policy review team was informed all photos taken by police personnel on June 4 was still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed as the Bureau currently does not have a retention policy for data entered into DIMS.

Officers working large protests sometimes operate under the impression that events have been documented when they haven’t. In a previous investigation regarding police actions during a protest in February 2017, IPR discovered that multiple officers cited reports written by other officers that were never written. These omissions affected the ability of IPR to perform a thorough and accurate investigation. The community and IPR could have benefited from more concrete information concerning the storage and retention of the photographs and data collected on June 4. Former PPB Chief Michael Marshman indicated in a 06/06/17 interview he hadn’t heard of PPB officers taking photos of ID’ during the June 4th protest, and stated he was unsure if one of the partner agencies was responsible for the act, as it was not PPB’s practice to do so. 

The Police Bureau should recognize that some segments of the community does not trust the Police Bureau or the City due to now prohibited practices from previous decades past practice of the Police Bureau’s now inactive “Red Squad” such as which conducted the gathering of intelligence on political activists gathering activities, including photographing, covert surveillance, and keeping files on certain individuals and political organizations of political activists. Without clear policies around the use of photographs of detained person and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.
It is important that a written policy consider our shared values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions no matter how well intentioned may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by the Bureau personnel and whether they were within existing policy.

**Recommendation:**

The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos, including who within the Police Bureau will have access to photos and whether they will be shared with other law enforcement agencies. Such a policy should include a deadline after which the photographs must be purged if there are no criminal charges.

/waiting for further clarification from sgt panel on this issue.

### Community members expressed concerns after June 4th

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4th protest. The ACLU observed these issues on June 4th and has recommended changes to Police Bureau operations and policy but they felt that the Police Bureau has disregarded their comments. The ACLU of Oregon later filed a class action lawsuit on behalf of protesters, media and bystanders who were detained in the kettle.

After the June 4th event, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven different community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4th event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

[**Infographic – Arrested – Charged – Convicted**](#) for different events

The Rapid Response Team said they have sometimes “backed off” in protests since June 4th based on the smaller size of the events, an interest in preserving resources, and in an attempt to let people “self-regulate.” Kettling and taking photos of protesters’ IDs do not seem to have been used since June 4th, but the Police have confiscated items they deem to be weapons.
Analysis and Recommendations

Crowd control situations present unique challenges for police officers on the ground and for police bureaus when writing policy and outlining the tactics available to groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must consider public safety concerns and be prepared. Keeping groups separated and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best way to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

Bias and seizing property

Members of the public expressed concerns about Portland Police confiscating property from protesters in Chapman Square but not from other groups downtown. Jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.
If seized property can be returned to the owner at a later time, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a claim receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

Attempting to contact groups prior to an event is a prudent measure but Portland Police should be aware that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members preferred not to interface with the police beforehand.

**Kettling and Photographing IDs**

As evidenced by the kettling on June 4th, the Police Bureau does not always consider the full range of consequences when it engages in some crowd control activities. The Bureau must understand there is a cost to any action that restricts someone’s freedom of movement. Even for actions that they have the authority to do, without transparent justification and guidance in a directive and operating procedure, the Rapid Response Team’s rationale for deploying such tactics will remain unclear to the public and the Bureau will be forced to explain its actions after the fact.

In terms of photographing protesters with their IDs, without strict policies around the use of this strategy and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies. Establishing a chain of custody is essential to the investigation of a crime and can be difficult at protests because of the need to pass information between detaining, arresting and investigating parties. Regardless, without reasonable suspicion in the first place, prosecution is impossible and efforts such as those taken on June 4th are futile at best and violate the public’s trust and rights at worst.

Police directives and policies must be specific to ensure that the Police Bureau has fully considered rights guaranteed under the First and Fourth amendments and not just chilling free speech. Without clarity and communication around the tactics employed on June 4th, members of the public believe that Portland Police were engaged in tactics that unfairly targeted them and violated their rights. The lack of clarity also appeared to lead to confusion among police leadership about what actions were undertaken by the Bureau and whether they were within existing policy.

**Intergovernmental Agreements**

Well-dictatedClear policies around which tactics may and may not be used explaining permissible crowd control tactics will also make it easier to coordinate with outside tactics: other agencies that participate in the RRT. Though they. Although Intergovernmental agreements are reviewed annually, the agreements that Portland Police the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This idea: his principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s
directives, particularly use of force, are updated to be more restrictive than those used by outside agencies’.

There was some community concern expressed that the City would utilize outside agencies with less stringent use of force policies in an attempt to avoid the Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies making their employees or documents available to Portland during administrative investigations of alleged misconduct by City employees.

**Recommendation:**

Update intergovernmental agreements to require outside agencies to comply with the Police Bureau’s Use of Force policies.

Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.

The Rapid Response Team would also not want to be seen as deploying squads from other law enforcement agencies to “do their dirty work” because they fall outside the Bureau and IPR’s
jurisdiction for accountability. Agreements should also be updated so that partner agencies must comply with requests from oversight agencies seeking to review events.

**Recommendations**

Crowd control situations present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureau goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism way to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

**Recommendations:**

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. When seizing property at events, follow procedures outlined in Directive 660.10 (Property and Evidence). Consider adding unique procedures for safekeeping and seizing property at protests to The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.
When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action of the event should review the actions of the officers involved.

6. whether the mass detention or arrest was appropriately ordered and implemented.

7. Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers. Consider discontinuing the use of kettling as a containment tactic and add it to the list of “Prohibited Crowd Control Tactics.” Add specific language on mass arrests and mass detentions in Directive 635.10 (Crowd Management/Crowd Control) or transparently justify the use of this tactic by explaining the circumstances and restrictions on its use in Directive 635.10 (Crowd Management/Crowd Control).

3. Develop a Police Directive specific to conducting stops and the probable cause requirements.

4. Consider discontinuing the photographing of protesters’ IDs and add it to the list of “Prohibited Crowd Control Tactics” in Directive 635.10 or transparently justify the use of this tactic by explaining the circumstances and restrictions on its use in Directive 635.10 (Crowd Management/Crowd Control).

5. Update intergovernmental agreements so that officers from other jurisdictions are expected to read and comply with applicable directives and have opportunity to be held accountable when they do not require outside agencies.

8. Police Bureau should expand its use of video recordings capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Record encrypted police communications for oversight review and training purposes. Video footage taken at crowd control events of demonstrations taken by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. The Police Bureau should not photograph individuals detained but not changed with a crime absent a written policy governing the use of the photos, including who within the Police Bureau will have access to photos and whether they will be shared with other law enforcement agencies. Such a policy should include a deadline after which the photographs must be purged if there are no criminal charges.

6. Update intergovernmental agreements to require outside agencies to comply with the Police Bureau’s Use of Force policies.
13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City's administrative investigation process.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

DATE

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City Auditor

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Director

Office of the City Auditor
Portland, Oregon
Released in MONTH, YEAR

Cover Photo by
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Executive Summary

Summarize major points and recommendations when we’re done

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early decades of the 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations protesting the policies of the new federal administration occurred on Inauguration Day, President’s Day, and May Day leading to multiple confrontations between police and protestors.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled multiple rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to "liberate the conservatives on the West Coast."

In late April, Patriot Prayer held a "March for Free Speech" rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX light rail train when they attempted to intervene when someone started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder, and other related charges. It was soon learned that Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its "Free Speech Rally" set for June 4 at Terry Schrunk Plaza in downtown Portland. Many in the community saw the event as Islamophobic citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for the "Free Speech" rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the already-approved permit for the rally, which the federal government refused to do citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations including the ACLU of Oregon which issued a statement which read in past respond, "(t)he
government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period." Patriot Prayer indicated they would not cancel their event. A number of organizations, including union groups, interfaith groups, and Rose City Antifa, scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally on June 4.

Portland Police maintains a Rapid Response Team

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents. The bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive significant additional training in Police Bureau-approved crowd control tactics, and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

The Portland Police Bureau describes the Rapid Response Team as its unit equipped to handle mass incidents. Besides mass protests or demonstrations, the Rapid Response Team will deploy to other large gatherings, such as holiday festivals and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain with a lieutenant serving as the executive officer and divided into several squads, each led by a sergeant. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, helmets, smoke canisters, gas canisters, and less lethal weapons.

In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington including Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Outside agencies will agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Some of the law enforcement agencies that the Police Bureau maintains a mutual aid agreement include Oregon State Police, Multnomah County Sheriff’s Office, and Office, and Washington County Sheriff’s Office. Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

Additionally, the Police Bureau also deploys Mobile Field Force officers during protests and other
incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. The Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

**Police Planning and Resources on June 4th**

Police Bureau personnel said they do a substantial amount of planning and preparation prior to a demonstration or rally. For the June 4 event, the Police Bureau was concerned about the high risk of violence due to clashes at previous local rallies between individuals affiliated with Patriot Prayer and local anarchists and Antifa members.

Over 200 Police Bureau officers were deployed in response to the rally in a variety of functions from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

<table>
<thead>
<tr>
<th>Rapid Response Deployment on June 4th</th>
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<tbody>
<tr>
<td><strong>Portland Police Bureau</strong></td>
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<tr>
<td>Rapid Response Squads: 3</td>
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<tr>
<td>Rapid Response Officers: 52</td>
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<tr>
<td><strong>Oregon State Police</strong></td>
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<tr>
<td>Rapid Response Squads: 2</td>
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<tr>
<td>Rapid Response Officers: Not Provided</td>
</tr>
<tr>
<td><strong>Multnomah County Sheriff</strong></td>
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<tr>
<td>Rapid Response Squads: 1</td>
</tr>
<tr>
<td>Rapid Response Officers: Not Provided</td>
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</tbody>
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**Police Bureau Attempts to Contact Protest Participants**

Prior to an event, the Police Bureau attempts to find out which groups may be attending, and gauge the tenor of conversation around the event to decide if there is the potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4 protest and counter-protests. In the weeks leading up to the incident, this sergeant monitored open source social media platforms, and noted multiple individuals associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. This raised concerns due to previous protests in other cities devolving into physical clashes between opposing groups.
The Special Events Sergeant contacted individuals associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant obtained assurances from multiple people that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group, and to express their concerns verbally, not physically.

On June 4, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Persons associated with the Patriot Prayer members group and some counter-protesters exchanged multiple text messages with the sergeant, and coordinated the response of their own security staff based on information provided by the sergeant. Individuals associated with Antifa members exchanged fewer text messages with the sergeant. When the sergeant told them that counter-protesters in Chapman Square were throwing items such as bricks and water bottles at police, the organizers denied it.

Groups Assembled in Downtown Parks

Terry Shrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.
Those associated with the Patriot Prayer Free Speech Rally assembled in Terry Schrunk Plaza which is owned and administered by the federal government.

Terry Schrunk Plaza is a small park located between Portland’s City Hall to the west, and the federal Edith Wyatt-Green Building to the east. Schrunk Plaza is owned and administered by the federal government.

Chapman Square is directly to the north of Schrunk Plaza, across SW Madison Street. The Portland Building sits to Chapman Square’s west across SW 4th Avenue, while the Justice Center is to the east, across SW 3rd Avenue.

Lownsdale Square, is to the north of Chapman Square, across SW Main Street. The Multnomah County Circuit Courthouse lies to the west, while the Mark Hatfield United States Courthouse sits to the east.

The three parks and the streets around them formed the location of most of the events of June 4th.

Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Schrunk Plaza.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Wyatt-Green Federal Building on SW 3rd across the street from Shrunck Plaza. A coalition of individuals called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Ave.

Those planning the Police Bureau’s response to the June 4 rally, identified “four distinct groups” prior to the protest, and planned their response under the assumption that those in Chapman Park were “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational
violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend. The counter-protest at City Hall was estimated that it would have between 500-600 persons in attendance.

Jurisdictional issues complicated planning for the event and the public perception of the Police Bureau’s response. Federal Protective Services was positioned at Terry Schrunk Plaza. Some of the complaints received indicated that some community members believed that the federal officers were part of the Rapid Response Team and under the control of the Police Bureau. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland.

Officers Clear Chapman Square

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza, to separate the opposing demonstrators from each other. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Shrunk Plaza. During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

The Police Bureau used its sound truck to broadcast several warnings, directing individuals within the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the announcements made by the sound truck, as well as the times they were broadcast.
12:32pm

The Police Bureau sound truck made the following announcement:

This is the Portland Police Bureau streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

The warning was provided seven times between 12:32pm and 12:53pm.

Just after 1:00 pm

Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

Between 1:02 pm and 2:44 pm,

the sound truck broadcast ten times, warning both sides to remain in their respective parks and that “offensive actions by either side would be taken as a criminal act. The announcement also warned that offenders would face arrest and the “park [Chapman] may be closed.”

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. A review of documents and video from community and police sources indicate that there were few issues at the counter-protests held at City Hall and in front of the Wyatt-Green Building.

At 3:15 pm,

the sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protestors in Chapman Square to the broadcast police warnings.
At 3:27 pm,

the sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

3:30 pm, members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

Between 3:30 pm and 4:14 pm, the sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north.

Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square. A group
of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. The group estimated as roughly 200-300 persons, was declared an unlawful assembly at 3:51 pm.

After approximately 15 minutes, this group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

**Mass Detention at SW 4th and Morrison**

At 4:21 pm, a group of counter-protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police. The marchers were detained mid-block between SW 4th between SW Morrison and Alder. A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th Avenue while a Police Bureau Rapid Response Team squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander for the purpose of investigating the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the NE corner of the intersection of SW 4th and Morrison when a state trooper deployed less lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.
At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of the detained individuals, most of were released without charge. The mass detention lasted approximately one hour. Then Police Bureau Chief Marshman later wrote that photographing the identification of detained individuals was made to “speed up the process.” A-IPR’s review by JLR-of police reports filed by members of the Field Arrest Teams indicates that 389 individuals were photographed by the Police Bureau while detained at SW 4th Avenue.
Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, the Oregonian, the Willamette Week, the Portland Tribune, and Vice Media. The journalists were processed in a similar process as the protestors and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally was ending, Rapid Response Team squads relocated closer to Schrunk Plaza where, as the Patriot Prayer Rally was ending, police broke up scuffles between various groups of protesters, as people left the area.

**Community Concerns**

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to Police Bureau operations and policy but they felt that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After the June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

***Infographic – Arrested – Charged – Convicted*** for different events

<table>
<thead>
<tr>
<th>Date</th>
<th>Arrests</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 20th</td>
<td>5</td>
</tr>
<tr>
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<td>13</td>
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<tr>
<td>May 1st</td>
<td>29</td>
</tr>
<tr>
<td>June 4th</td>
<td>14</td>
</tr>
<tr>
<td>September 10th</td>
<td>7</td>
</tr>
</tbody>
</table>

**Accusations of Favoritism by Police**

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass
arrests. Multiple community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, A lieutenant with the Rapid Response Team indicated protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.” Police Bureau personnel indicated the Rapid Response Protest Liaison Officer Rose City Antifa was unable to communicate with Rose City Antifa the Rapid Response Protest Liaison Officer prior to June 4.

Bias and seizing property

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square but not from other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

Prior to the June 4 rally, the Police Bureau issued a press release noting its concerns for potential of violence and warning that weapons and items that could be utilized as weapons could be seized:

There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.
The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

**Bias in Planning and Communication**

Attempting to contact groups prior to an event is a prudent measure but Portland Police should be aware that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a social media presence as well as sending out regular press releases, but having a website for specific events that could include relevant statutory authority as well as disseminate in real time sound trucks warning, concerns about crowd behavior, and actions taken by officers.
Recommendations:

For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

**Person Associated with Patriot Prayer Assists in Arrest**

Multiple community members contacted IPR with their concern about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, which fed into the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protestors.

Former Police Chief Marshman was asked for the Police Bureau policy on interacting with right-wing militia groups in a June 6 radio interview. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” The Chief indicated Police Bureau members “definitely encourage people not to get involved.”

**Police Use of a Kettle/Box-In**

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protestors at SW Fourth Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protestors and access out of the containment is controlled by law enforcement. Activist groups and media generally call this tactic a kettle while the Police Bureau generally refers to the tactic as a box-in or containment. The kettle or box-in is utilized by domestic and international police departments and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March, and the 2017 US Presidential Inauguration in Washington D.C.

The first documented use of the tactic in Portland involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to...

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1 Kettle derives from the German word Kessel, which translates as either kettle or cauldron. A kettle also describes a military tactic, where a large force will surround an opposing force, separating it from external support and the surrounded force is eventually made ineffective as a fighting force.
indict a white police officer who killed Michael Brown, an 18-year-old black man. After several
days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the
Portland’s Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators
on all four sides and detained those within the containment for about one hour. Ten people were
arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office
later cited the police report’s lack of documentation in police reports of specific criminal acts
committed by those individuals arrested for its inability to prosecute.

**MAP** show where kettling occurred

The Kettle/box-in is controversial among activists for a number of reasons. One concern is the
possible detention of bystanders not involved in any disruptive or illegal activity. There is also
disagreement between those who believe that police use of a kettle/box-in de-escalates a
potentially violent situation and those who feel it exacerbates feelings of discontent in an already
tense environment.

A former Police Bureau incident commander indicated a box-in is often difficult to execute
because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to
make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it
sometimes takes longer than that, it just becomes difficult.”

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding
the protestors on all sides. The built environment of downtown Portland aided the officers in
containing the marchers. Those detained at SW Fourth and Morrison had officers to the north and
south, with buildings confining the group’s movement to the east and west. Eventually additional
officers responded to assist with the detention.

The Vancouver (B.C) Police Department indicated it does not use this type of containment even
though it is allowed by Canadian courts because of the large number of officers required and
human rights considerations.

A law professor interviewed during an investigation of the 2014 mass detention and arrest,
referred the US Supreme Court case Terry v. Ohio and indicated police would require
reasonable suspicion to stop a large group of people, which would be “very fact and context
specific.” The professor indicated the “the tighter the connection among the people, the better
the case” for police being justified in a mass detention, whereas their justification would be
weakened with “the more people there are and the fewer perpetrators and the less connections
there are between them.” The professor indicated officers may utilize their discretion to arrest a
certain number of protesters who committed a crime and let other protesters go for the same
crime due to limited resources.

A Willamette University professor that IPR interviewed indicated public safety would take
precedence during a protest, and stated officers would have to make a “split-second” decision
whether to detain a large group of people. The professor stated if officers “think a group is being
threatening, then they can either hold them or ask them to disperse.” The professor indicated
community members may not agree with the decisions officers make, and noted there is “tension
between liberty and security.”
Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. The ACLU of Oregon had a legal observer who was present at Chapman Square and ACLU legal director indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct, a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that articulates the reasonable suspicion had by officers prior to the detention of the marchers. While video taken by police and civilians at the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there was no police video or reports reviewed by IPR documenting showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding disorderly conduct.

**Need for Police Bureau Policy for Mass Detention and Arrests**

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing

2 ORS 166.025, Class B misdemeanor.
stops and detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau to prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

The lack of a written policy regarding mass detention and arrests additionally deprives the Police Bureau of the opportunity of crafting a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process allows is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by certain segments of the population. Community concerns will have to be weighed and against the governmental interests the Police Bureau seeks to advance.

Any credible mass detention and arrest policy would need to provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible and what types of warning would need to be provided to demonstrators. The policy will also have to consider the length of detention and whether weather conditions suitable for holding a large group outside. The policy would also have to determine at what point the Police Bureau have the obligation of providing those detained with access to food, water, and restrooms.

Additionally, whenever there has been a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Recommendation:

The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the "after-action" of the event should review whether the mass detention or arrest was appropriately ordered and implemented.
Absent Exigent Circumstances Media or Legal Observers Should Not be Detained

Currently, Directive 635.10(Crowd Control) prohibits the arrest of media and legal observers:

*Media or legal observers will not be arrest solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and may be subject to arrest for failure to do so.*

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4, were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The police detention of members of the media with no warning calls to question is unjustifiable.

**Recommendation:**

Directive 635.10 should be amended to include a general prohibition on the detention of media and legal observers.

Police Documentation of Mass Events

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers who are usually Forensic Evidence Division criminalists. Video is often taken from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators.

In the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. We would echo that suggestion and recommend that in addition to video from individual Rapid Response Team squads there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not include currently identifiers such as the time and date taken or identify the videographer. We would recommend that that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As a result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Outside agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control
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events be preserved.

Recommendations:

Police Bureau should expand its use of video recordings capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

**Police Photographing Detained Individuals**

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR indicated this was part of the an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained individuals and their identification quickly became controversial in some segments of the community. Chief Michael Marshman said in a June 6, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detain individuals on June 4, and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had in fact been Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of individuals and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos taken would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as the taking of the photographs constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and indicated the police violated Oregon State Law (ORS 181.575) which prohibits the collection and creation of files based on people’s political affiliation.

Other police oversight agencies in number of cities contacted by IPR such as Washington, DC and Berkeley, CA were not familiar with this tactic despite those cities frequency of protests. Seattle
Police said that they do photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University professor indicated she had not heard of any protesters previously being photographed by police for disorderly conduct. However, she indicated the US Supreme Court Case *Hiibel v. Sixth Judicial District Court of Nevada* ruled that people must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could claim damage had police entered their information into a photo database.

*Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention.* There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial statement. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.” During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The policy review team was informed Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Although these photos are subject to a legal hold as part of the ACLU’s lawsuit, as the Bureau currently does not have a retention policy for data entered into DIMS allowing for photos to be held indefinitely until staff are told to delete them.

**Detained Individuals Should Not Be Photographed Absent a Written Policy**

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain individuals and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy consider our shared values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.
**Recommendation:**

The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:

- who within the Police Bureau will have access to photos, and
- whether they will be shared with other law enforcement agencies, and
- a deadline after which the photographs must be purged if there are no criminal charges.

**Intergovernmental Agreements**

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside tactics. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies with less stringent use of force policies in an attempt to avoid the Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies making their employees or documents available to Portland during administrative investigations of alleged misconduct by City employees.

**Recommendation:**

Update intergovernmental agreements to require outside agencies to comply with the Police Bureau’s Use of Force policies.

Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureaus goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

3. That Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.
4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action of the event should review whether the mass detention or arrest was appropriately ordered and implemented.

7. Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

8. Police Bureau should expand its use of video recordings capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos, including who within the Police Bureau will have access to photos and whether they will be shared with other law enforcement agencies. Such a policy should include a deadline after which the photographs must be purged if there are no criminal charges.

12. Update intergovernmental agreements to require outside agencies to comply with the Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

DATE

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Executive Summary

Summarize major points and recommendations when we’re done

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day, and May Day lead to multiple confrontations between police and protestors.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to “liberate the conservatives on the West Coast.”

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder, and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” set for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer indicated they would not cancel their event. Union
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groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

**Portland Police maintains a Rapid Response Team**

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents. The bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics, and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain with a lieutenant serving as the executive officer and divided into several squads, each led by a sergeant. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, helmets, smoke canisters, gas canisters, and less lethal weapons.

In addition to its own resources, the Police Bureau maintains interagency agreements with several laws enforcement agencies in Oregon and Washington including Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.
The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team's response to an incident.

**Police Planning and Resources on June 4th**

Police Bureau personnel said they do a substantial amount of planning and preparation prior to a demonstration or rally. For the June 4 event, the Police Bureau was concerned about the risk of violence due to clashes at previous local rallies between individuals affiliated with Patriot Prayer and local anarchists and Antifa members.

Over 200 Police Bureau officers were deployed in response to the rally in a range of functions from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sherriff’s Office Rapid Response Team were part of the police response.

**Police Bureau attempts to contact protest participants**

Prior to an event, the Police Bureau attempts to find out which groups may attend and gauges the tenor of conversation around the event to assess the potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4 protest and counter-protests. In the weeks leading up to the incident, this sergeant monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. This raised concerns due to previous protests in other cities devolving into physical clashes between opposing groups.

The Special Events Sergeant contacted individuals associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s
responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

On June 4, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant, and coordinated the response of their own security staff based on information provided by the sergeant. Antifa members exchanged fewer text messages with the sergeant.

Groups Assembled in Downtown Parks

Terry Shrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.
Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Schrunk Plaza which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Wyatt-Green Federal Building on SW 3rd across the street from Shrunk Plaza. A coalition of individuals called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Ave.

The Police Bureau identified “four distinct groups” prior to the protest and stated in planning documents the group planning to be in Chapman Park was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event and the public perception of the Police Bureau’s response. Federal Protective Services was positioned at Terry Schrunk Plaza. IPR complaints showed that some community members believed that the federal officers were part of the Rapid Response Team and under the control of the Police Bureau. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland.
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**Officers Clear Chapman Square**

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza, to separate the opposing demonstrators from each other. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Shrunk Plaza. During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

On June 4, during the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant, and coordinated the response of their own security staff based on information provided by the sergeant. Antifa members exchanged fewer text messages with the sergeant. When the sergeant told counter protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing individuals within the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the announcements made by the sound truck, as well as the times they were broadcast.

12:32pm The Police Bureau sound truck made the following announcement:

*This is the Portland Police Bureau streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.*

The warning was provided seven times between 12:32pm and 12:53pm.
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Just after 1:00 pm, officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

Between 1:02 pm and 2:44 pm, the sound truck broadcast ten times, warning both sides to remain in their respective parks and that “offensive actions by either side “would be taken as a criminal act. The announcement also warned that offenders would face arrest and the “park [Chapman] may be closed.”

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources indicate few issues at the counter-protests held at City Hall and in front of the Wyatt-Green Building.

3:15 pm, the sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protestors in Chapman Square to the broadcast police warnings.

3:27 pm, the sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.
3:30 pm, members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

Between 3:30 pm and 4:14 pm, the sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north.
Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square. A group of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. The group estimated as roughly 200-300 persons, was declared an unlawful assembly at 3:51 pm.

After approximately 15 minutes, this group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

**Mass Detention at SW 4th and Morrison**

At 4:21 pm, a group of counter-protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police. The marchers were detained mid-block between SW 4th between SW Morrison and Alder. A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th Avenue while a Police Bureau Rapid Response Team squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the NE corner of the intersection of SW 4th and Morrison when a state trooper deployed less lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.
At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of the detained individuals, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that photographing the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams indicates that 389 individuals were photographed by the Police Bureau while detained at SW 4th Avenue.
Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, the Oregonian, the Willamette Week, the Portland Tribune, and Vice Media. The journalists were processed in a similar process as the protestors and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

Community Concerns

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to Police Bureau operations and policy but they felt that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

Accusations of Favoritism by Police

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass
arrests. Multiple community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team indicated protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.” Police Bureau personnel indicated the Rapid Response Protest Liaison Officer was unable to communicate with Rose City Antifa prior to June 4.

**Bias and seizing property**

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square but not from other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

Prior to the June 4 rally, the Police Bureau issued a press release noting its concerns for potential of violence and warning that weapons and items that could be utilized as weapons could be seized:

> There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.
The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

**Bias in Planning and Communication**

Attempting to contact groups prior to an event is a prudent measure but the Police Bureau should be aware that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence as well as sending out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound trucks warning, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media.
but a website may provide a better venue, in a single place, for such information.

Recommendations:

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

Person Associated with Patriot Prayer Assists in Arrest

Multiple community members contacted IPR with their concern about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, which fed into the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protestors.

Former Police Chief Marshman was asked for the Police Bureau policy on interacting with right-wing militia groups in a June 6 radio interview. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” The Chief indicated Police Bureau members “definitely encourage people not to get involved.”

Police Use of a Kettle/Box-In

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protestors at SW Fourth Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protestors and access out of the containment is controlled by law enforcement. Activist groups and media generally call this tactic a kettle while the Police Bureau refers to the tactic as a box-in or containment. The kettle or box-in is utilized by domestic and international police departments and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student

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1 Kettle derives from the German word Kessel, which translates as either kettle or cauldron. A kettle also describes a military tactic, where a large force will surround an opposing force, separating it from external support and the surrounded force is eventually made ineffective as a fighting force.
March and the 2017 US Presidential Inauguration in Washington D.C.

The first documented use of the tactic in Portland involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The Kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

A former Police Bureau incident commander indicated a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.”

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protestors on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW Fourth and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The Vancouver (B.C) Police Department indicated it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

A law professor interviewed during an investigation of the 2014 mass detention and arrest, referenced the US Supreme Court case *Terry v. Ohio* and indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor indicated the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may utilize their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University professor that IPR interviewed indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor indicated
community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. The ACLU of Oregon had a legal observer who was present at Chapman Square and ACLU legal director indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct, a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that articulates the reasonable suspicion had by officers prior to the detention of the marchers. No witnesses were interviewed regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding disorderly conduct.

Commented [JK17]: Add statement here from officer report about what they were ordered to do.

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2 ORS 166.025, Class B misdemeanor.
Need for Police Bureau Policy for Mass Detention and Arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

The lack of a written policy regarding mass detention and arrests additionally deprives the Police Bureau of the opportunity of crafting a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by certain segments of the population. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible and what types of warning would need to be provided to demonstrators. The policy will also have to consider the length of detention and if weather conditions suitable for holding a large group outside. The policy would also have to determine the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water, and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd
control event, the "after-action review" of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

Absent Exigent Circumstances Media or Legal Observers Should Not be Detained

Currently, Directive 635.10(Crowd Control) prohibits the arrest of media and legal observers:

*Media or legal observers will not be arrest solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.*

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The police detention of members of the media with no warning calls to question. The detention of so many members of the media raised community concerns.

Recommendation:

7. Directive 635.10 should be amended to include a general prohibition on the detention of media and legal observers.

Police Documentation of Mass Events

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers who are usually Forensic Evidence Division criminalists. Video is often taken from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators.

In the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. We would echo that suggestion and recommend that in addition to video from individual Rapid Response Team squads there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time and date taken or the videographer. We would recommend that that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does...
June 2017 Protest Policy Review

not preserve nor archive. As result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. Police Bureau should expand its use of video recordings capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

Police Photographing Detained Individuals

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR indicated this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained individuals and their identification quickly became controversial in some segments of the community. Chief Marshman said in a June 6, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of individuals and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as the taking of the photographs constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and indicated the police
violated Oregon State Law (ORS 181.575) which prohibits the collection and creation of files based on people’s political affiliation.

Other police oversight agencies in number of cities contacted by IPR such as Washington, DC and Berkeley, CA were not familiar with this tactic despite those cities frequency of protests. Seattle Police said that they do photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University professor indicated she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor indicated the US Supreme Court Case *Hiibel v. Sixth Judicial District Court of Nevada* ruled that people must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could claim damages had if police inappropriately entered their information into a photo database.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial statement. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.” During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Although these photos are subject to a legal hold as part of the ACLU’s lawsuit, The Bureau currently does not have a retention policy for data entered into DIMS allowing for photos to be held indefinitely until staff are told to delete them.

**Detained Individuals Should Not Be Photographed Absent a Written Policy**

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain individuals and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.
It is important that a written policy consider reflect our shared values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

Recommendation:

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will have access to photos,
   - whether they will be shared with other law enforcement agencies, and
   - a deadline after which the photographs must be purged if there are no criminal charges.

Intergovernmental Agreements

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside tactics. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies with less stringent use of force policies in an attempt to avoid the Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies making their employees or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

12. Update intergovernmental agreements to require outside agencies to comply with the Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies to cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureaus goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions. Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureaus best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

1. For larger crowd control events, the Police Bureau should create a website for it to better
communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. **When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.**

7. Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

8. Police Bureau should expand its use of video recordings capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos, including who within the Police Bureau will have access to photos and whether they will be shared with other law enforcement agencies. Such a policy should include a deadline after which the photographs must be purged if there are no criminal charges.

12. Update intergovernmental agreements to require outside agencies to comply with the Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies cooperate...
with the City's administrative investigation process.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
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Executive Summary

Summarize major points and recommendations when we’re done

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau's response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President's Day, and May Day lead to multiple confrontations between police and protestors.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to "liberate the conservatives on the West Coast."

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder, and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” set for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer indicated they would not cancel their event. Union
groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

**Portland Police maintains a Rapid Response Team**

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents. The bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics, and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain with a lieutenant serving as the executive officer and divided into several squads, each led by a sergeant. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, helmets, smoke canisters, gas canisters, and less lethal weapons.

In addition to its own resources, the Police Bureau maintains interagency agreements with several laws enforcement agencies in Oregon and Washington including Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.
The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

**Police Planning and Resources on June 4th**

Police Bureau personnel said they do a substantial amount of planning and preparation prior to a demonstration or rally. For the June 4 event, the Police Bureau was concerned about the risk of violence due to clashes at previous local rallies between individuals affiliated with Patriot Prayer and local anarchists and Antifa members.

Over 200 Police Bureau officers were deployed in response to the rally in a range of functions from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

**Police Bureau attempts to contact protest participants**

Prior to an event, the Police Bureau attempts to find out which groups may attend and gauges the tenor of conversation around the event to assess the potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4 protest and counter-protests. In the weeks leading up to the incident, this sergeant monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. **This raised concerns due to previous protests in other cities devolving into physical clashes between opposing groups.**

The Special Events Sergeant contacted individuals associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s
responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

Groups Assembled in Downtown Parks

Terry Shrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.

Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Shrunk Plaza which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Wyatt-Green Federal Building on SW 3rd across the street from Shrunk Plaza. A coalition of individuals called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Ave.

The Police Bureau identified “four distinct groups” prior to the protest and stated in planning documents the group planning to be in Chapman Park was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the
Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event and the public perception of the Police Bureau’s response. Federal Protective Services was positioned at Terry Schrunk Plaza. IPR complaints showed that some community members believed that the federal officers were part of the Rapid Response Team and under the control of the Police Bureau. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland.

**Officers Clear Chapman Square**

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza, to separate the opposing demonstrators from each other. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Shrunk Plaza. During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant. Antifa members exchanged fewer text messages with the sergeant. When the sergeant told counter protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.
The Police Bureau used its sound truck to broadcast several warnings, directing individuals within the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the announcements made by the sound truck, as well as the times they were broadcast.

12:32 PM

The Police Bureau sound truck made the following announcement:

*This is the Portland Police Bureau streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.*

The warning was provided seven times between 12:32pm and 12:53pm.

1:00 PM

Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

1:02 PM – 2:44 PM

The sound truck broadcast ten times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that offenders would face arrest and the “park [Chapman] may be closed.”

1:45 PM

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources indicate few issues at the counter-
protests held at City Hall and in front of the Wyatt-Green Building.

3:15 PM

The sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present move to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protestors in Chapman Square to the broadcast police warnings.

3:27 PM

The sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

3:30 PM

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

3:30 PM-4:14 PM

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north.

3:51 PM

Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square. A group of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. The group estimated as roughly 200-300 persons, was declared an unlawful assembly at 3:51 pm.
Mass Detention at SW 4th and Morrison

At 4:21 pm, a group of counter-protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police. The marchers were detained mid-block between SW 4th between SW Morrison and Alder. A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th Avenue while a Police Bureau Rapid Response Team squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the NE corner of the intersection of SW 4th and Morrison when a state trooper deployed less lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

_This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause._

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

_This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest._

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.
Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of the detained individuals, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that photographing the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams indicates that 389 individuals were photographed by the Police Bureau while detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, the Oregonian, the Willamette Week, the Portland Tribune, and Vice Media. The journalists were processed in a similar process as the protestors and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

Community Concerns

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to Police Bureau operations and policy but they felt that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.
June 2017 Protest Policy Review

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

**Accusations of Favoritism by Police**

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Multiple community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team indicated protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.” Police Bureau personnel indicated the Rapid Response Protest Liaison Officer was unable to communicate with Rose City Antifa prior to June 4.

**Bias and seizing property**

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square but not from other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also
allows for police to preemptively take custody of property that may be used in the commission of a crime.

Prior to the June 4 rally, the Police Bureau issued a press release noting its concerns for potential of violence and warning that weapons and items that could be utilized as weapons could be seized:

_There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally._

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).
Bias in Planning and Communication

Attempting to contact groups prior to an event is a prudent measure but the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence as well as sending out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound trucks warning, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and statements to media but a website may provide a single, centralized place for such information.

Recommendations:

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 1AC.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

Person Associated with Patriot Prayer Assists in Arrest

Multiple community members contacted IPR with their concern about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, which fed into the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protestors.

Former Police Chief Marshman was asked for the Police Bureau policy on interacting with right-wing militia groups in a June 6 radio interview. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “(p)eople just kind of come in.” The Chief indicated Police Bureau members “definitely encourage people not to get involved.”
Police Use of a Kettle/Box-In

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protestors at SW Fourth Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protestors and access out of the containment is controlled by law enforcement. Activist groups and media generally call this tactic a kettle while the Police Bureau refers to the tactic as a box-in or containment. The kettle or box-in is utilized by domestic and international police departments and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 US Presidential Inauguration in Washington D.C.

The first documented use of the tactic in Portland involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The Kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

A former Police Bureau incident commander indicated a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.”

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protestors on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW Fourth and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The Vancouver (B.C) Police Department indicated it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.
A law professor interviewed during an investigation of the 2014 mass detention and arrest, referenced the US Supreme Court case *Terry v. Ohio* and indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor indicated the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may utilize their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University professor that IPR interviewed indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor indicated community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. The ACLU of Oregon had a legal observer who was present at Chapman Square and ACLU legal director indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police
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reports and video provided by the Police Bureau finds little documentation of crowd behavior that articulates the reasonable suspicion had by officers prior to the detention of the marchers. No witnesses were interviewed regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding disorderly conduct.

Need for Police Bureau Policy for Mass Detention and Arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau to prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

The lack of a written policy regarding mass detention and arrests additionally deprives the Police Bureau of the opportunity of crafting a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by certain segments of the population. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible and what types of warning would need to be provided to demonstrators. The policy will also have to consider the length of detention and if weather conditions suitable for holding a large group outside. The policy would also have to determine the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water, and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.
Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

Absent Exigent Circumstances Media or Legal Observers Should Not be Detained

Currently, Directive 635.10 (Crowd Control) prohibits the arrest of media and legal observers:

Media or legal observers will not be arrest solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4, were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns.

Recommendation:

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

Police Documentation of Mass Events

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers who are usually Forensic Evidence Division criminalists. Video is often taken from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to
record events that may be of interest to criminal or administrative investigators.

In the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. We would echo that suggestion and recommend that in addition to video from individual Rapid Response Team squads there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time and date taken or the videographer. We would recommend that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As a result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. The Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

**Police Photographing Detained Individuals**

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR indicated that was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained individuals and their identification quickly became controversial in some segments of the community.

Chief Marshman said in a June 6, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4 and wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken...
the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of individuals and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as the taking of the photographs constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and indicated the police violated Oregon State Law (ORS 181.575) which prohibits the collection and creation of files based on people’s political affiliation.

Other police oversight agencies in number of cities contacted by IPR such as Washington, DC and Berkeley, CA were not familiar with this tactic despite those cities frequency of protests. Seattle Police said that they do photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University professor indicated she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor indicated the US Supreme Court Case *Hiibel v. Sixth Judicial District Court of Nevada* ruled that people must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial statement. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.” During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are subject to a legal hold, which prohibits their destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention policy for data entered into DIMS allowing for photos to be held indefinitely until staff are told to

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Detained Individuals Should Not Be Photographed Absent a Written Policy

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain individuals and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect our shared values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

Recommendation:

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will have access to photos,
   - whether they will be shared with other law enforcement agencies, and
   - a deadline after which the photographs must be purged if there are no criminal charges.

Intergovernmental Agreements

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside tactics. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies with less stringent use of force policies in an attempt to avoid the Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple
times by community members.

Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies making their employees or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

12. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.


**Recommendations**

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureau's goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau's best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

1. **For larger crowd control events,** the Police Bureau should create a website for it to better communicate with the public.
2. **The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.**
3. **The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.**
4. **The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.**
5. **The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.**
6. **When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.**
7. **The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.**
8. **Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.**
9. **Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer's name.**
10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will have access to photos,
   - whether they will be shared with other law enforcement agencies, and
   - a deadline after which the photographs must be purged if there are no criminal charges.

12. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
Executive Summary

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why.

Events Leading Up to and Including June 4, 2017

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day lead to multiple confrontations between police and protesters.
Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to “liberate the conservatives on the West Coast.”

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do, citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations, including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer indicated they would not cancel their event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

Portland Police maintains a Rapid Response Team
The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents, including protests. The Bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals, and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain, with a lieutenant serving as the executive officer, and is divided into several squads, each run by a sergeant. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, helmets, smoke canisters, gas canisters and less lethal weapons.

In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington including Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

**Police Bureau attempts to contact protest participants**

In the weeks leading up to the incident, the Bureau monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest may escalate into physical violence, as had happened in other cities.

The Special Events Sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their
political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also reached out to multiple people associated with Antifa and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

The Police Bureau also issued a press release noting its concerns for potential of violence, warning that weapons and items that could be used as weapons could be seized:

_There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally._

Over 200 Police Bureau officers were deployed in response to the rally in a range of functions, from serving as members of mobile field teams, to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sherriff’s Office Rapid Response Team were part of the police response.

**Groups assembled in downtown parks**
Groups of Patriot Prayer members and various counter-protesters convened on June 4th in a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon Street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.

Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Green-Wyatt Federal Building on SW 3rd across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Ave.

In planning documents the Police Bureau identified four distinct groups and stated the group planning to be in Chapman Square was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning, but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being
communicated freely between agencies, but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland in 2011.

**Officers Cleared Chapman Square**

Tensions between groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protesters as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages with the sergeant. When the sergeant told counter-protest organizers in...
Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing people in the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square:

12:32 PM

The Police Bureau sound truck made the following announcement:

_This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square._

The warning was provided seven times between 12:32pm and 12:53pm.

1:00 PM

Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM

The sound truck broadcast 10 times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”
The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources indicate few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.

The sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protestors in Chapman Square to the broadcast police warnings.

The sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north. Officers continued to move protesters to the north,
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out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square.

3:51 PM  
A group of roughly 200-300 protesters remained in SW Main Street and in Lownsdale Square to the north and was declared an unlawful assembly.

4:05 PM  
This group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

Police detained nearly 400 people at SW 4th and Morrison

At 4:21 pm, this group of counter-protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police between SW 4th between SW Morrison and Alder. This group, which included some journalists, were not allowed to leave until they and their identification were individually photographed by police.

A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.
The only reported use of force at the detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State Trooper deployed less-lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.
Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people while detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protestors and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

**Community Concerns**

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to the Police Bureau on operations and policy but ACLU leaders have said that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about the mass detention that led to protesters being individually
Community members accused police of favoritism of Favoritism Against Police

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.” Police Bureau personnel indicated the Special Events Sergeant was unable to communicate with Rose City Antifa prior to June 4.

Bias Community members saw favoritism and in seizing property

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.
The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

**Bias Police were inconsistent in Planning and Communication**

Attempting to contact groups prior to an event is a prudent measure. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate
in real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and statements to media, but a website may provide a single, centralized place for such information.

Recommendations:

1. **For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.**

2. **The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.**

Someone associated with Patriot Prayer assisted with arrest

Community members contacted IPR with concerns about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, which may have contributed to confusion. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protesters.

In a June 6 radio interview, Former Police Chief Marshman was asked about the Police Bureau policy on interacting with right-wing militia groups. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “(p)eople just kind of come in.” The Chief said Police Bureau members “definitely encourage people not to get involved.”

Police used “kettling” to detain protesters

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protestors at SW Fourth Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protestors, controlling access in and out of that area. Activist groups and media generally call this tactic a kettle, while the Police Bureau refers to the tactic as a “box-in” or “containment.” The kettle or box-in is used by domestic and international police departments and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 US Presidential Inauguration in Washington, D.C.
Portland Police’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protesters on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

**Kettling/boxing-in is a controversial tactic**

The Kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials said there are also logistical issues involved with the use of the tactic. A former Police Bureau incident commander said a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

Academics say there are reasons to use a kettle/box-in tactic, but legal thresholds are high. A Lewis and Clark University law professor interviewed during an investigation of the 2014 mass detention and arrest, referenced the US Supreme Court case *Terry v. Ohio* and said police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor said the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may use their discretion to arrest a
certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University law professor interviewed by IPR indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor said community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. An ACLU of Oregon legal observer present at Chapman Square and ACLU legal director said there was “no way” that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Although those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that would articulate the officers’ reasonable suspicion of a crime had by officers prior to the detention of the marchers. No witnesses were interviewed regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians.
obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding that no detained marchers were questioned about their alleged disorderly conduct. In police reports, detectives and members of the field arrest team said they were directed to identify individuals who were detained.

**Portland Police Bureau needs a policy for mass detention and arrests**

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws.

The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by some. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible; and
- describe the types of warnings need to be provided to demonstrators;
- consider the length of detention and if weather conditions are suitable for holding a large group outside; The policy would also have to determine the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.
Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

Absent Exigent Circumstances Media or Legal Observers Should Not be Detained

Among those detained in the kettle were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. Journalists were processed in a similar manner to the protestors and were required to be photographed and show identification prior to release. Police policy currently speaks to the arrest of media members, but does not include information on the detention of media members. Currently, Directive 635.10(Crowd Control) prohibits the arrest of media and legal observers:

Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017 had an opportunity to comply with police requests prior to being detained. The events of June 4th were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns.

Recommendation:

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.
Police documentation of mass events needs improvement

The Police Bureau seeks to document

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators.

In the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team squads, there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time and date taken or the videographer. This information is important. We recommend that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As a result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. The Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with the videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

Police photographed detained individuals without clear policy for use and retention

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect
their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR said this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained protesters and their identification quickly became controversial with some community members.

Chief Marshman said in a June 6, 2017 Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4 and wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as it constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and said he believed the police violated Oregon State Law (ORS 181.575), which prohibits the collection and creation of files based on people’s political affiliation.

Other police oversight agencies contacted by IPR in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. Seattle Police said that they do photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University law professor said she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor said that according to the US Supreme Court Case Hiibel v. Sixth Judicial District Court of Nevada, people must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial statement on OPB. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management.
Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.” During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are subject to a legal hold, which prohibits their destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held indefinitely until staff are told to delete them.

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades, such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain activists and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect our shared values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

Recommendation:

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:

- who within the Police Bureau will be authorized to access to photos,
- whether they will be shared with other law enforcement agencies, and
- a deadline after which the photographs must be purged if there are no criminal charges.

Intergovernmental agreements need to be updated

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside agencies. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become
more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies that have less stringent use of force policies in an attempt to avoid the Portland Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

12. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during...

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureau’s goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

8. Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.
10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will have access to photos,
   • whether they will be shared with other law enforcement agencies, and
   • a deadline after which the photographs must be purged if there are no criminal charges.

12. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

DATE

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Released in MONTH, YEAR

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Executive Summary

Political activism and protest have a long history in Portland. Since the 2016 Presidential election, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017 attracted significant attention from counter-protesters and law enforcement.

In the weeks leading up to the incident, Portland Police became concerned that the protest may escalate into physical violence and decided to deploy the Rapid Response Team, its unit that is specially trained in crowd control tactics.

On June 4th, groups of Patriot Prayer members and various counter-protesters convened on June 4th in a series of parks in downtown Portland. Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests.

Tensions between the groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protesters as they marched north. This group of nearly 400 counter-protestors were detained by police to investigate possible disorderly conduct using a tactic called “kettling.” This group, which included some journalists, were not allowed to leave until they and their identification were individually photographed by police.

Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. IPR found little evidence to show disorderly conduct and police reports indicate that those detained were not questioned about disorderly conduct before they were released.

Portland Police also identified and photographed detained individuals without a clear policy on how those photos will be used, shared and retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau has no assurance that the tactic will not be used as an attempt to chill free speech and dissenting voices.

IPR recommends changes and to police directives and standard operating procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their
considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why.
Events Leading Up to and Including June 4, 2017

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day lead to multiple confrontations between police and protesters.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to "liberate the conservatives on the West Coast."

In late April, Patriot Prayer held a "March for Free Speech" rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.
After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do, citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations, including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer indicated they would not cancel their event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

Portland Police maintains a Rapid Response Team

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents, including protests. The Bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals, and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, helmets, smoke canisters, gas canisters and less lethal weapons.

In addition to its own resources, the Police Bureau maintains interagency agreements with several...
laws enforcement agencies in Oregon and Washington including Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

**Police Bureau attempted to contact protest participants**

In the weeks leading up to the incident, the Bureau monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest may escalate into physical violence, as had happened in other cities.

The Special Events Sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also reached out to multiple people associated with Antifa and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

The Police Bureau also issued a press release noting its concerns for potential of violence, warning that weapons and items that could be used as weapons could be seized:

> There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.
Over 200 Police Bureau officers were deployed in response to the rally in a range of functions, from serving as members of mobile field teams, to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sherriff’s Office Rapid Response Team were part of the police response.

**Groups assembled in downtown parks**

Groups of Patriot Prayer members and various counter-protesters convened on June 4th in a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon Street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.

Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Green-Wyatt Federal Building on SW 3rd across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Ave.

In planning documents the Police Bureau identified four distinct groups and stated the group planning to be in Chapman Square was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.
Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning, but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies, but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland in 2011.

**Officers cleared Chapman Square**

Tensions between groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protesters as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages with the sergeant. When the sergeant told counter-protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing people in the...
crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square:

12:32 PM

The Police Bureau sound truck made the following announcement:

_This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square._

The warning was provided seven times between 12:32pm and 12:53pm.

1:00 PM

Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM

The sound truck broadcast 10 times, warning both sides to remain in their respective parks and that "offensive actions by either side" would be taken as a criminal act. The announcement also warned that participants would face arrest and the "park [Chapman] may be closed."

1:45 PM

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources indicate few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.
The sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protestors in Chapman Square to the broadcast police warnings.

The sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square.

A group of roughly 200-300 protesters remained in SW Main Street and in Lownsdale Square to the north and was declared an unlawful assembly.

This group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.
Police detained nearly 400 people at SW 4th and Morrison

At 4:21 pm, this group of counter-protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police between SW 4th and Morrison and Alder. Police stated they detained the group to investigate disorderly conduct. This group, which included some journalists, were not allowed to leave until they and their identification were individually photographed by police.

A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State Trooper deployed less-lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:
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This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people while detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protestors and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

IPR Received Community Concerns After June 4th

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to the Police Bureau on operations and policy but ACLU leaders have said that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.
After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about the mass detention that led to protesters being individually searched and photographed with their identification.

**IPR's Analysis of Police Action and Policies**

**Community members saw favoritism in property seizure**

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime. The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.
A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter-protesters in and around Chapman Square.

Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, we recommend the Bureau add them to the Directive 635.10 (Crowd Management/Crowd Control).

Recommendation:

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.
Police were inconsistent in planning and communication

Attempting to contact all participants prior to an event is a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to communicate with Rose City Antifa prior to June 4th. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and statements to media, but a website may provide a single, centralized place for such information.

Recommendation:

2. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

Someone associated with Patriot Prayer assisted with arrest

Community members contacted IPR with concerns about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, which may have contributed to confusion. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protesters.

In a June 6 radio interview, Former Police Chief Marshman was asked about the Police Bureau policy on interacting with right-wing militia groups. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” The Chief said Police Bureau members “definitely encourage people not to get involved.”
Police used “kettling” to detain protesters

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettle”ed protestors at SW Fourth Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protestors, controlling access in and out of that area. Activist groups and media generally call this tactic a kettle, while the Police Bureau refers to the tactic as a “box-in” or “containment.” The kettle or box-in is used by domestic and international police departments and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 US Presidential Inauguration in Washington, D.C.

Portland Police’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protesters on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

Kettling/boxing-in is a controversial tactic

The kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials said there are also logistical issues involved with the use of the tactic. A former Police Bureau incident commander said a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes
takes longer than that, it just becomes difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

Academics say there are reasons to use a kettle/box-in tactic, but legal thresholds are high. A Lewis and Clark University law professor interviewed during an investigation of the 2014 mass detention and arrest, referenced the US Supreme Court case *Terry v. Ohio* and said police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor said the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may use their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University law professor interviewed by IPR indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor said community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

**Police did not fully articulate or investigate disorderly conduct suspicions**

Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. IPR found little evidence to show disorderly conduct and police reports indicate that those detained were not questioned about disorderly conduct before they were released.

An ACLU of Oregon legal observer present at Chapman Square and ACLU legal director said there was “no way” that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle. Although those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that would articulate the officers’ reasonable suspicion of a crime prior to the detention of the marchers. No witnesses were interviewed regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, it appears that no detained marchers were questioned about their alleged disorderly conduct. In police reports detectives and members of the field arrest team said they were directed to identify individuals who were detained.
Portland Police Bureau needs a policy for mass detention and arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws.

The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by some. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators;
- consider the length of detention and if weather conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide...
those detained with access to food, water and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

Media or legal observers should not be detained

Among those detained in the kettle were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. Journalists were processed in a similar manner to the protestors and were required to be photographed and show identification prior to release. Police policy currently speaks to the arrest of media members, but does not include information on the detention of media members. Directive 635.10(Crowd Control) prohibits the arrest of media and legal observers:

*Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.*

There is no indication that the media representatives detained on June 4, 2017 had an opportunity to comply with police requests prior to being detained. The events of June 4th were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns.

Recommendation:

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.
Police documentation of mass events needs improvement

The Police Bureau seeks to document mass events to document officers’ action and aid in possible criminal prosecutions. Additional elements are needed to make the documentation more useful to reviewers and investigators.

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators.

In the event’s After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team squads, there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time and date or the videographer. This information is important to ensure accuracy and help understand complex situations. We recommend that that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. The Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with the videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.
Police photographed detained individuals without clear policy for use and retention

Portland Police identified and photographed detained individuals without a clear policy on how those photos will be used, shared and retained. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau has no assurance that the tactic will not be used as an attempt to chill free speech and dissenting voices.

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR said this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained protesters and their identification quickly became controversial with some community members.

Chief Marshman said in a June 6, 2017 Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4 and wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as it constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and said he believes the police violated Oregon State Law, which prohibits the collection and creation of files based on people’s political affiliation.

Other police oversight agencies contacted by IPR in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. Seattle Police said that they do photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University law professor said she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor said that according to the US Supreme Court Case Hiibel v. Sixth Judicial District Court of Nevada, people must submit
identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing all detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial statement on OPB. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are subject to a legal hold, which prohibits their destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held indefinitely until staff are told to delete them.

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades, such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain activists and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect community values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

Recommendation:

12. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will be authorized to access the photos;
   - whether they will be shared with other law enforcement agencies; and
   - a deadline after which the photographs must be purged if there are no criminal charges.
Intergovernmental agreements need to be updated

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside agencies. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies that have less stringent use of force policies in an attempt to avoid the Portland Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureau’s goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

2. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

8. Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.
10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

12. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will be authorized to access the photos;
   • whether they will be shared with other law enforcement agencies; and
   • a deadline after which the photographs must be purged if there are no criminal charges.

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
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Executive Summary

Political activism and protest have a long history in Portland. Since the 2016 Presidential election, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted significant attention from counter-protesters and law enforcement.

In the weeks leading up to the incident, Portland Police became concerned that the protest may escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protesters convened in a series of parks in downtown Portland. Community members perceived disparities in how the Portland Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests.

Tensions between the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protesters as they marched north. A group of nearly 400 counter-protesters were detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national organizations who were not allowed to leave until they and their identification were individually photographed by police.

Several community members contacted by IPR were concerned that the Police Bureau did not have sufficient legal justification for the detention of most of the people held on June 4. IPR found little documentation by the Police Bureau to show its justification for the mass detention. Police reports also indicate that those detained were not questioned about disorderly conduct prior to their release.

The Police Bureau also photographed detained individuals without a clear policy on how those photos will be used, shared or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau has no assurance that the tactic will not be used as an attempt to chill free speech and dissenting voices.

IPR recommends changes to Policy Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism...
to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why.
Events Leading Up to and Including June 4 Protest

Political activism and protest have a long history in Portland, dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day lead to multiple confrontations between police and protesters.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to “liberate the conservatives on the West Coast.”

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

Arrests at Protests in 2017

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After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do, citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations, including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer said they would not cancel their event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

The Rapid Response Team

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents, including protests. The Bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals, and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is a led by a captain, with a lieutenant serving as the executive officer, and is divided into several squads, each run by a sergeant. Each squad has a grenadier, usually an experienced member of the team who receives additional training. The grenadier is authorized to use less-lethal weapons to protect other members of the team and to carry out objectives authorized by the Incident Commander. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.
In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

**Police Bureau attempts to contact protest participants**

In the weeks leading up to the incident, the Bureau monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence, as had happened in other cities.

The Special Events Sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also reached out to multiple people associated with Antifa and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

The Police Bureau also issued a press release noting its concerns for the potential of violence, warning that weapons and items that could be used as weapons faced possible seizure:

> There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.).
etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

More than 200 Police Bureau officers were deployed in response to the rally in a range of functions, from serving as members of mobile field teams, to providing support at the Emergency Operations Center. Additionally, two squads of the Oregon State Police Mobile Response Team and a squad from the Multnomah County Sherriff’s Office Rapid Response Team were part of the police response.

**Groups assembled in downtown parks**

Patriot Prayer members and various counter-protesters convened on June 4th in a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon Street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Free Speech Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Green-Wyatt Federal Building on SW 3rd across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and stated the group planning to be in Chapman Square was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups
didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning, but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies, but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland in 2011.

**Officers clear Chapman Square**

Tensions between groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protesters as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

Police seized items from protesters.

Lyndsey Hewitt – Courtesy of Portland Tribune

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages with the sergeant. When the sergeant told counter-protesters...
organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing people in the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square:

12:32 PM
The Police Bureau sound truck made the following announcement:

This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM
Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM
The sound truck broadcast 10 times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM
The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community
and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.

The sound truck announced that the south side of Chapman Square was closed due to "criminal activity," requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.

The sound truck made the following announcement:

*This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.*

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square.

A group of roughly 200-300 protesters remained in SW Main Street and in Lownsdale Square to the north and was declared an unlawful assembly.
Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

**Police detain nearly 400 people at SW 4th and Morrison**

At 4:21 pm, counter-protesters originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police between SW 4th Avenue between SW Morrison and Alder Streets. Police stated they detained the group to investigate disorderly conduct. This group, which included some journalists, were not allowed to leave until they and their identification were individually photographed by police.

A squad of state troopers were able to get in front of the marchers at SW Alder Street and prevent the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State trooper deployed less-lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

> This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.
Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

*This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.*

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

**Community Concerns received After June 4**

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, disproportionate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues
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on June 4 and has recommended changes to the Police Bureau on operations and policy; however, ACLU leaders have said that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about the mass detention that led to protesters being individually searched and photographed with their identification.

**IPR’s Analysis of Police Action and Policies**

Some community members saw favoritism in property seizure

Several community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.
Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter-protesters in and around Chapman Square.

Additionally, there were a number of weapons left behind by those detained at SW 4th and Morrison.

Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, we recommend the Bureau add them to the Directive 635.10 (Crowd Management/Crowd Control).

Recommendation:

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.
The Police Bureau should create an event-specific website for larger crowd control events

Attempting to contact all participants prior to an event is a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to communicate with Rose City Antifa prior to June 4. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and in statements to media, but a website may provide a single, centralized place updated in real time for such information.

Recommendation:

2. For larger crowd control events, the Police Bureau should create a website, that is update in real time, for it to better communicate with the public.

Civilian assists with arrest

Community members contacted IPR with concerns about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by media outlets as a member of the Police Bureau, which may have contributed to confusion. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protesters.

In a June 6 radio interview, former Police Chief Marshman was asked about Police Bureau policy on interacting with right-wing militia groups. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman said he had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” The Chief said Police Bureau members “definitely encourage people not to get involved.”
Police use of mass detention during a crowd control event

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protesters at SW 4th Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protesters, controlling access in and out of that area. Activist groups and media generally call this tactic a kettle, while the Police Bureau refers to the tactic as a “box-in” or “containment.” The kettle or box-in is used by domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 U.S. Presidential Inauguration in Washington, D.C.

Portland Police’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protesters on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

Kettling/boxing-in is a controversial tactic

The kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials said there are also logistical issues involved with the use of the tactic. A former Police Bureau incident commander said a box-in is often difficult to execute because of its complexity and timing adding that, “[If you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes
takes longer than that, it just becomes difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

Legal experts believe mass detention by law enforcement may be constitutionally permissible but requires significant justification. A Lewis and Clark University law professor interviewed during an investigation of the 2014 mass detention and arrest referenced the U.S. Supreme Court case 

*Terry v. Ohio* and said police would need reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor said the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may use their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University law professor interviewed by IPR said public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor said community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

**Lack of articulation of reasonable suspicion had by officers prior to mass detention**

Community members were concerned that there was no reasonable suspicion for all the people detained on June 4. IPR found little documentation by the Police Bureau of the reasonable suspicion had by officers prior to the crowd’s detention for disorderly conduct. Police reports indicate that those detained were not questioned about disorderly conduct prior to their release.

An ACLU of Oregon legal observer present at Chapman Square and the ACLU legal director said there was “no way” that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Although those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that would articulate the officers’ reasonable suspicion of a crime prior to the detention of the marchers. No witnesses were interviewed by officers regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, it appears that no detained marchers were questioned about
whether they had engaged in acts that could constitute disorderly conduct. In police reports
detectives and members of the field arrest team said they were directed by supervisors to identify
individuals who were detained.

**Portland Police Bureau needs a policy for mass detention and arrests**

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy.
In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing
stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass
detentions and arrests. IPR recommends that the Police Bureau prohibit the use of mass detention
or arrests absent a compelling government interest.

All Police Bureau officers receive
training on applicable constitutional
principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and
Oregon Constitutions and all applicable laws.

The lack of a Police Bureau policy regarding mass detentions and
arrests presents an area of risk for the
City. A well-reasoned mass detention
and arrest policy will allow the Police
Bureau to wrestle with competing
public policy goals prior to a highly-
charged event and allow for adequate
training based on policy.

In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the
opportunity to craft a policy that addresses legitimate public safety goals in consultation with the
community. The policy creation process is designed to allow the
public better understanding of police
goals. Any mass detention or arrest of
demonstrators in Portland will be
highly controversial, especially if it involves a tactic seen as punitive by some. Constitutional
protections and community concerns will have to be weighed against the governmental interests
the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

- provide adequate guidance to officers and articulate under what circumstances mass
detentions and arrests are permissible;
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- describe the types of warnings that need to be provided to demonstrators;
- consider the length of detention and if weather conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, it should be reviewed during the after action review of the event for proper application of policy and lessons learned.

Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether it was appropriately ordered and implemented.

**Media or legal observers should not be detained without first being given an opportunity to comply with police requests**

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. Journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release. Police policy currently speaks to the arrest of media members, but does not include information on the detention of media members. Directive 635.10(Crowd Control) addresses the arrest of media and legal observers:

> Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns of the City attempting suppress media coverage of the protest.
Recommendation:

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

Police documentation of mass events needs improvement

The Police Bureau documents mass events to record officers’ actions and to aid in criminal prosecutions. Additional elements are needed to make the documentation more useful to reviewers and investigators.

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators.

In the events After Action Review, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team squads, there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time, date, or the videographer. This information is important to ensure accuracy and help understand complex situations. We recommend that that Police Bureau video of crowd control events include date and time stamps, as well as the videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. The Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with the videographer’s name.

Commented [MR9]: Are we recommending that they expand surveillance of protesters? It is nice to have video for our reviews, but otherwise, what is the purpose of their videotaping of these events? Perhaps our recommendation should take a step back... "If they are going to videotape events, then they should..."

Commented [JK10R9]: I agree with this
10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

The Portland Police Bureau should not photograph individuals during a mass detention without a clear policy for use and retention

The Police Bureau identified and photographed detained individuals without a clear policy on how those photos will be used, shared and retained. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau has no ability to address community concerns that the tactic will not be used as an attempt to chill free speech and dissenting voices.

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR said this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained protesters and their identification quickly became controversial with some community members.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4th. He wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as it constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and said he believes the police additionally violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.

Police oversight agencies contacted by IPR in Washington, D.C. and Berkeley, Calif., were not
familiar with this tactic despite frequent protests in those cities. The Seattle Police Department said it does photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University law professor said she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor said that according to the U.S. Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada*, individuals must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither community members or Police Bureau staff that IPR contacted during this review were aware of prior instances of Bureau members photographing all detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial confusion on the topic when speaking to OPB. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)nyn photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are now subject to a legal hold, which prohibits their destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held indefinitely until staff are told to delete them.

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades, such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain activists and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect community values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

**Recommendation:**
12. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will be authorized to access the photos;
   • whether they will be shared with other law enforcement agencies; and
   • a deadline after which the photographs must be purged if there are no criminal charges.

**Intergovernmental agreements need to be updated**

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside agencies. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies that have less stringent use of force policies in an attempt to avoid the Portland Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating that cooperating outside agencies make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.

**Recommendations:**

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units like the Rapid Response Team. When tensions between opposing groups of protesters are as high as they were on June 4, the police must balance public safety concerns and be prepared. Portland faced the real risk of violence on June 4, and in reviewing the practices of a number of other police departments, the Police Bureau’s goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use.

While this policy review makes a number of recommendations that will hopefully lead to better Police Bureau policy and procedures for crowd control events we also recognize that they are incredibly dynamic and kinetic events. The reviewers had at their disposal an array of documents, video, and witness perspectives that Police Bureau personnel did not have available on June 4. A review of all the available material related to this event only serves to underscore significant dangers attached. Tensions in this community leading to the June 4 rally were at an elevated level. By all indications, members of the Police Bureau took their duties seriously and understood the gravity of their task. It is likely the planning, preparation, and actions of members of the Portland Police Bureau on June 4 prevented violent confrontations that occurred in a number of cities around the country during the summer of 2017.

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

2. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or
arrest was appropriately ordered and implemented.

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

8. Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

12. The Police Bureau should not photograph individuals detained but not changed with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will be authorized to access the photos;
   • whether they will be shared with other law enforcement agencies; and
   • a deadline after which the photographs must be purged if there are no criminal charges.

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Methodology

The objective of our review was to assess the Portland Police Bureau’s response to the June 4th rally organized by Patriot Prayer and related counter-protests and associated police bureau policies and directives.

We reviewed Police Bureau Directives on Crowd Management/Crowd Control (635.10) and Use of Force (1010). We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We reviewed police reports, after action reports and Forensic Evidence Division video from the June 4th event. We also interviewed two Police Bureau Lieutenants from the Rapid Response Team. We reviewed other Police Bureau communication after the event including Chief Marshman’s appearance on Oregon Public Broadcasting’s “Think Out Loud” and his written response to Mayor Wheeler.

As part of our review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We also consulted with officials responsible for crowd control from Seattle Police Department and the Vancouver (B.C.) Police Department.
Independent Police Review


DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
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Executive Summary

Political activism and protest have a long history in Portland. Since the 2016 Presidential election, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted significant attention from counter-protesters and law enforcement.

In the weeks leading up to the incident, Portland Police became concerned that the protest may escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protesters convened in a series of parks in downtown Portland. Community members perceived disparities in how the Portland Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests.

Tensions between the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protesters as they marched north. A group of nearly 400 counter-protesters were detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national organizations who were not allowed to leave until they and their identification were individually photographed by police.

Several community members were concerned that the Police Bureau did not have sufficient legal justification for the detention of most of the people held on June 4. IPR found little documentation by the Police Bureau to show its justification for the mass detention. Police reports also indicate that those detained were not questioned about disorderly conduct prior to their release.

The Police Bureau also photographed detained individuals without a clear policy on how those photos will be used, shared or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines it cannot sufficiently address community concerns that the tactic will be used as an attempt to chill free speech and dissenting voices.

Following the June 4 rally, several community members contacted the Independent Police Review (IPR) to file complaints about the actions of the police. While some of the complaints were about the actions of individual Police Bureau officers, which were investigated separately,
many dealt with broader issues better addressed in a policy review.

IPR recommends changes to Policy Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. The development of policy, and in the case of directives, their opportunity for public comment, represents the Bureau’s best means to communicate with the public on what it considers appropriate tactics and behavior by its members.

**IPR Authority**

Following the June 4 rally, several community members contacted IPR to file complaints about the actions of the police. While some of the complaints were about the actions of individual Police Bureau officers, which were investigated separately, many dealt with broader issues better addressed in a policy review.

The Independent Police Review (IPR) is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned. During a policy review, the assigned staff will review relevant Police Bureau policy, talk to community members and Bureau staff, and review collected documents. It is IPR’s practice to conclude a policy review with a public report that allows community members access to the review team’s work and recommendations.
Events Leading Up to and Including June 4 Protest

Protests have become common in Portland

Political activism and protest have a long history in Portland, dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day lead to multiple confrontations between police and protesters.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to “liberate the conservatives on the West Coast.”

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

Arrests at Protests in 2017

<table>
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<tr>
<th>Date</th>
<th>Arrests</th>
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<tr>
<td>January 20th</td>
<td>5</td>
</tr>
<tr>
<td>February 20th</td>
<td>13</td>
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<tr>
<td>May 1st</td>
<td>29</td>
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<td>June 4th</td>
<td>14</td>
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<td>September 10th</td>
<td>7</td>
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In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.
After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do, citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations, including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer said they would not cancel their event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

**The Rapid Response Team**

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents, including protests. The Bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals, and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain, with a lieutenant serving as the executive officer, and is divided into several squads, each run by a sergeant. Each squad has a grenadier, usually an experienced member of the team who receives additional training. The grenadier is authorized to use less-lethal weapons to protect other members of the team and to carry out objectives authorized by the Incident Commander. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.
In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

**Police Bureau attempted to contact protest participants**

In the weeks leading up to the incident, the Bureau monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence, as had happened in other cities.

The Special Events Sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also reached out to multiple people associated with Antifa and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

The Police Bureau also issued a press release noting its concerns for the potential of violence, warning that weapons and items that could be used as weapons faced possible seizure:

*There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles,*
rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

More than 200 Police Bureau officers were deployed in response to the rally in a range of functions, from serving as members of mobile field teams, to providing support at the Emergency Operations Center. Additionally, two squads of the Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

**Groups assembled downtown**

Patriot Prayer members and various counter-protesters convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon Street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Free Speech Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Green-Wyatt Federal Building on SW 3rd across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and stated the group planning to be in Chapman Square was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to
“violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning, but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies, but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland in 2011.

**Officers cleared Chapman Square**

Tensions between groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protesters as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant. Antifa members were less responsive and...
exchanged fewer text messages with the sergeant. When the sergeant told counter-protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing people in the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square:

12:32 PM The Police Bureau sound truck made the following announcement:

_This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square._

The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM The sound truck broadcast 10 times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and
1,200 at City Hall. Documents and video from community and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.

3:15 PM

The sound truck announced that the south side of Chapman Square was closed due to “criminal activity,” requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.

3:27 PM

The sound truck made the following announcement:

>This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

3:30 PM

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

3:30 PM-4:14 PM

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square.

3:51 PM

A group of roughly 200-300 protesters remained in SW Main Street and in Lownsdale Square to the north and was declared an unlawful assembly.
Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

Police detained nearly 400 people at SW 4th and Morrison

At 4:21 pm, counter-protesters originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police between SW 4th Avenue between SW Morrison and Alder Streets. Police stated they detained the group to investigate disorderly conduct. The detained, including several journalists, were not allowed to leave until they and their identification were individually photographed by police.

A squad of state troopers were able to get in front of the marchers at SW Alder Street and prevent the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State trooper deployed less-lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.
Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

**Community Concerns received After June 4**

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, disproportionate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues
on June 4 and has recommended changes to the Police Bureau on operations and policy; however, ACLU leaders have said that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about the mass detention that led to protesters being individually searched and photographed with their identification.

**IPR’s Analysis of Police Action and Policies**

**Some community members saw favoritism in property seizure**

Several community members perceived disparities in how the Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14.C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.
Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter-protesters in and around Chapman Square.

Additionally, there were a number of weapons left behind by some individuals detained at SW 4th and Morrison.

Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, we recommend the Bureau add them to the Directive 635.10 (Crowd Management/Crowd Control).

Recommendation:

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.
The Police Bureau should create an event specific website for larger crowd control events

Attempting to contact all participants prior to an event is a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to communicate with Rose City Antifa prior to June 4. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and in statements to media, but a website may provide a single, centralized place updated in real time for such information.

Recommendation:

2. For larger crowd control events, the Police Bureau should create a website, that is updated in real time, for it to better communicate with the public.

Police use of mass detention during a crowd control event

In the days following the June 4 protest, community members contacted IPR stating that the Police Bureau had “kettled” protesters at SW 4th Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protesters, controlling access in and out of that area. Activist groups and media generally call this tactic a kettle, while the Police Bureau generally refers to the tactic as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 U.S. Presidential Inauguration in Washington, D.C.

The Police Bureau’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front
of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protesters on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

**Kettling/boxing-in is a controversial tactic**

The kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials said there are also logistical issues involved with the use of the tactic. A former Police Bureau incident commander said a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

Legal experts believe mass detention by law enforcement may be constitutionally permissible but requires significant justification. A Lewis and Clark University law professor interviewed during an investigation of the 2014 mass detention and arrest referenced the U.S. Supreme Court case *Terry v. Ohio* and said police would need reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor said the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may use their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University law professor interviewed by IPR said public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor said community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”
Lack of documentation of reasonable suspicion had by officers prior to mass detention

Some community members raised concerns that there was not a sufficient basis given for all the persons detained on June 4. IPR found little documentation by the Police Bureau of the reasonable suspicion had by officers prior to the crowd’s detention for disorderly conduct. Police reports indicate that those detained were not questioned about disorderly conduct prior to their release.

An ACLU of Oregon legal observer present at Chapman Square and the ACLU legal director said there was “no way” that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Although those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that would articulate the officers’ reasonable suspicion of a crime prior to the detention of the marchers. No witnesses were interviewed by officers regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, it appears that no detained marchers were questioned about whether they had engaged in acts that could constitute disorderly conduct. In police reports detectives and members of the field arrest team said they were directed by supervisors to identify individuals who were detained.

The Police Bureau needs a policy for mass detention and arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau, create a stop policy to govern the actions of its members when they engage in stops and other forms of temporary detention during their regular duties and amend its crowd control directive to prohibit the use of mass detention or arrest absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws.

The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.
In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by some. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators;
- consider the length of detention and if weather conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, it should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd
control event, the after action review of the event should determine whether it was appropriately ordered and implemented.

**Media or legal observers should not be detained without first being given an opportunity to comply with police requests**

Among those detained were several journalists, including those employed by the *Coos Bay World*, Getty Images, *The Oregonian*, *Willamette Week*, *Portland Tribune* and Vice Media. Journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release. Police policy currently speaks to the arrest of media members, but does not include information on the detention of media members. Directive 635.10(Crowd Control) addresses the arrest of media and legal observers:

> Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns of the City attempting suppress media coverage of the protest.

**Recommendation:**

7. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include a general prohibition on the detention of media and legal observers.

**Police documentation of mass events needs improvement**

The Police Bureau documents mass events to record officers’ actions and to aid in criminal prosecutions. Additional improvements are needed to make the Bureau’s documentation efforts a more useful tool.

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators. Better video collection efforts will promote the community and City’s shared goal of greater accountability at crowd control events.

In the event’s After Action Review, the Chief’s Office recommended that some Rapid Response
Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team squads, there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time, date, or the videographer. This information is important to ensure accuracy and help understand complex situations. We recommend that that Police Bureau video of crowd control events include date and time stamps, as well as the videographer on the video.

Additionally, all video taken at crowd control events by Police Bureau personnel should have clear guidelines on access and use of the collected video, as well as having a retention period.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. Video taken by Police Bureau personnel should attempt to document the dynamic nature of a crowd control event as well as the actions of members of the public and officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with the videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

The Portland Police Bureau should not photograph individuals during a mass detention without a clear policy

On June 4, the Police Bureau identified and photographed 389 detained individuals without a clear policy on how those photos will be used, shared and retained. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau has no ability to address community concerns that the tactic will not be used as an attempt to chill free speech and dissenting voices.

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they
were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR said this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained protesters and their identification quickly became controversial with some community members.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4. He wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as it constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and said he believes the police additionally violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.”

Police oversight agencies contacted by IPR in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. The Seattle Police Department said it does photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University law professor said she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor said that according to the U.S. Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada*, individuals must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither community members or Police Bureau staff that IPR contacted during this review were aware of prior instances of Bureau members photographing all detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial confusion on the topic when speaking to OPB. In a June 21 memo, Chief Marshman wrote...
to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are now subject to a legal hold, which prohibits their destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held indefinitely until staff are told to delete them.

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades, such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain activists and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect community values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

**Recommendation:**

12. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:

- who within the Police Bureau will be authorized to access the photos;
- whether they will be shared with other law enforcement agencies; and
- a deadline after which the photographs must be purged if there are no criminal charges.

**Intergovernmental agreements need to be updated**

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside agencies. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will
become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies that have less stringent use of force policies in an attempt to avoid the Portland Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating that cooperating outside agencies make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units like the Rapid Response Team. When tensions between opposing groups of protesters are as high as they were on June 4, the police must balance public safety concerns and be prepared. Portland faced the real risk of violence on June 4, and in reviewing the practices of a number of other police departments, the Police Bureau’s goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use.

While this policy review makes a number of recommendations that will hopefully lead to better Police Bureau policy and procedures for crowd control events we also recognize that they are incredibly dynamic and kinetic events. The reviewers had at their disposable an array of documents, video, and witness perspectives that Police Bureau personnel did not have available on June 4. A review of all the available material related to this event only serves to underscore significant dangers attached. Tensions in this community leading to the June 4 rally were at an elevated level. By all indications, members of the Police Bureau took their duties seriously and understood the gravity of their task. It is likely the planning, preparation, and actions of members of the Portland Police Bureau on June 4 prevented violent confrontations similar to those that occurred in a number of cities around the country during the summer of 2017.

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

2. For larger crowd control events, the Police Bureau should create a website, that is updated in real time, for it to better communicate with the public.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or
arrest was appropriately ordered and implemented.

7. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include a general prohibition on the detention of media and legal observers.

8. Video taken by Police Bureau personnel should attempt to document the dynamic nature of a crowd control event as well as the actions of members of the public and officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

12. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:

   • who within the Police Bureau will be authorized to access the photos;
   • whether they will be shared with other law enforcement agencies; and
   • a deadline after which the photographs must be purged if there are no criminal charges.

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Methodology

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau policies and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We also interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Several members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver (B.C.) Police Department.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

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City Auditor

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Director

Office of the City Auditor
Portland, Oregon
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Executive Summary

Political activism and protest have a long history in Portland. Since the 2016 Presidential election, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted significant attention from counter protestors and law enforcement.

In the weeks leading up to the incident, Portland Police became concerned that the protest may escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter protestors convened in a series of parks in downtown Portland. Community members perceived disparities in how the Portland Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests.

Tensions between the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter protestors as they marched north. A group of nearly 400 counter protestors were detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national organizations who were not allowed to leave until they and their identification were individually photographed by police.

Several community members were concerned that the Police Bureau did not have sufficient legal justification for the detention of most of the people held on June 4. IPR found little documentation by the Police Bureau to show its justification for the mass detention. Police reports also indicate that those detained were not questioned about disorderly conduct prior to their release.

The Police Bureau also photographed detained individuals without a clear policy on how those photos will be used, shared or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines it cannot sufficiently address community concerns that the tactic will be used as an attempt to chill free speech and dissenting voices.

Following the June 4 rally, several community members contacted the Independent Police Review (IPR) to file complaints about the actions of the police. While some of the complaints were about the actions of individual Police Bureau officers, which were investigated separately, many dealt with broader issues better addressed in a policy review.
IPR recommends changes to Policy Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. The development of policy, and in the case of directives, their opportunity for public comment, represents the Bureau’s best means to communicate with the public on what it considers appropriate tactics and behavior by its members.

**IPR Authority**

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned. During a policy review, the assigned staff will review relevant Police Bureau policy, talk to community members and Bureau staff, and review collected documents. It is IPR’s practice to conclude a policy review with a public report that allows community members access to the review team’s work and recommendations.
Events Leading Up to and Including June 4 Protest

Protests have become common in Portland

Political activism and protest have a long history in Portland, dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day lead to multiple confrontations between police and protesters.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to “liberate the conservatives on the West Coast.”

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter protestors were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter protestors by racial slurs prior to being escorted away by Portland Police officers.
After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do, citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations, including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer said they would not cancel their event. Union groups, interfaith groups, and Rose City Antifa scheduled counter protests for June 4 in the same vicinity as the Patriot Prayer rally.

The Rapid Response Team

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents, including protests. The Bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals, and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain, with a lieutenant serving as the executive officer, and is divided into several squads, each run by a sergeant. Each squad has a grenadier, usually an experienced member of the team who receives additional training. The grenadier is authorized to use less-lethal weapons to protect other members of the team and to carry out objectives authorized by the Incident Commander. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.
In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

**Police Bureau attempted to contact protest participants**

In the weeks leading up to the incident, the Bureau monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence, as had happened in other cities.

The Special Events Sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also reached out to multiple people associated with Antifa and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

The Police Bureau also issued a press release noting its concerns for the potential of violence, warning that weapons and items that could be used as weapons faced possible seizure:

> There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles,
rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

More than 200 Police Bureau officers were deployed in response to the rally in a range of functions, from serving as members of mobile field teams, to providing support at the Emergency Operations Center. Additionally, two squads of the Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

**Groups assembled downtown**

Patriot Prayer members and various counter protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon Street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Free Speech Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Green-Wyatt Federal Building on SW 3rd across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and stated the group planning to be in Chapman Square was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to
“violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning, but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies, but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland in 2011.

**Officers cleared Chapman Square**

Tensions between groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and...
exchanged fewer text messages with the sergeant. When the sergeant told counter-protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing people in the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square:

12:32 PM  
The Police Bureau sound truck announced:

_This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square._

The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM  
Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM  
The sound truck broadcast 10 times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM  
The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community
and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.

3:15 PM

The sound truck announced that the south side of Chapman Square was closed due to “criminal activity,” requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.

3:27 PM

The sound truck made the following announcement:

*This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.*

3:30 PM

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

3:30 PM-4:14 PM

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square.

A group of roughly 200-300 protesters remained in SW Main Street and in Lownsdale Square to the north and was declared an unlawful assembly.
Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

**Police detained nearly 400 people at SW 4th and Morrison**

At 4:21 pm, counter protesters originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police between SW 4th Avenue between SW Morrison and Alder Streets. Police stated they detained the group to investigate disorderly conduct. The detained, including several journalists, were not allowed to leave until they and their identification were individually photographed by police.

A squad of state troopers were able to get in front of the marchers at SW Alder Street and prevent the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State trooper deployed less-lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

*This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.*
Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

\[
\text{This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.}
\]

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

Community Concerns received After June 4

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, disproportionate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues
on June 4 and has recommended changes to the Police Bureau on operations and policy; however, ACLU leaders have said that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about the mass detention that led to protesters being individually searched and photographed with their identification.

**IPR’s Analysis of Police Action and Policies**

**Some community members saw favoritism in property seizure**

Several community members perceived disparities in how the Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.
Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter protestors in and around Chapman Square.

Additionally, there were a number of weapons left behind by some individuals detained at SW 4th and Morrison.

Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, we recommend the Bureau add them to the Directive 635.10 (Crowd Management/Crowd Control).

Recommendation:

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.
The Police Bureau should create an event specific website for larger crowd control events

Attempting to contact all participants prior to an event is a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to communicate with Rose City Antifa prior to June 4. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and in statements to media, but a website may provide a single, centralized place updated in real time for such information.

Recommendation:

2. For larger crowd control events, the Police Bureau should create a website, that is updated in real time, for it to better communicate with the public.

Police use of mass detention during a crowd control event

In the days following the June 4 protest, community members contacted IPR stating that the Police Bureau had “kettled” protesters at SW 4th Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protesters, controlling access in and out of that area. Activist groups and media generally call this tactic a kettle, while the Police Bureau generally refers to the tactic as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 U.S. Presidential Inauguration in Washington, D.C.

The Police Bureau’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the police station.
of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protesters on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

**Kettling/boxing-in is a controversial tactic**

The kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials said there are also logistical issues involved with the use of the tactic. A former Police Bureau incident commander said a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

Legal experts believe mass detention by law enforcement may be constitutionally permissible but requires significant justification. A Lewis and Clark University law professor interviewed during an investigation of the 2014 mass detention and arrest referenced the U.S. Supreme Court case *Terry v. Ohio* and said police would need reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor said the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may use their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University law professor interviewed by IPR said public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor said community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”
Lack of documentation of reasonable suspicion had by officers prior to mass detention

Some community members raised concerns that there was not a sufficient basis given for all the persons detained on June 4. IPR found little documentation by the Police Bureau of the reasonable suspicion had by officers prior to the crowd’s detention for disorderly conduct. Police reports indicate that those detained were not questioned about disorderly conduct prior to their release.

An ACLU of Oregon legal observer present at Chapman Square and the ACLU legal director said there was “no way” that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Although those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that would articulate the officers’ reasonable suspicion of a crime prior to the detention of the marchers. No witnesses were interviewed by officers regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, it appears that no detained marchers were questioned about whether they had engaged in acts that could constitute disorderly conduct. In police reports detectives and members of the field arrest team said they were directed by supervisors to identify individuals who were detained.

The Police Bureau needs a policy for mass detention and arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau, create a stop policy to govern the actions of its members when they engage in stops and other forms of temporary detention during their regular duties and amend its crowd control directive to prohibit the use of mass detention or arrest absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.
In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by some. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators;
- consider the length of detention and if weather conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, it should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd
control event, the after action review of the event should determine whether it was appropriately ordered and implemented.

Media or legal observers should not be detained without first being given an opportunity to comply with police requests

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. Journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release. Police policy currently speaks to the arrest of media members, but does not include information on the detention of media members. Directive 635.10(Crowd Control) addresses the arrest of media and legal observers:

_Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and may be subject to arrest for failure to do so._

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns of the City attempting suppress media coverage of the protest.

Recommendation:

7. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include a general prohibition on the detention of media and legal observers.

Police documentation of mass events needs improvement

The Police Bureau documents mass events to record officers’ actions and to aid in criminal prosecutions. Additional improvements are needed to make the Bureau’s documentation efforts a more useful tool.

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators. Better video collection efforts will promote the community and City’s shared goal of greater accountability at crowd control events.

In the event’s After Action Review, the Chief’s Office recommended that some Rapid Response
Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team squads, there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time, date, or the videographer. This information is important to ensure accuracy and help understand complex situations. We recommend that that Police Bureau video of crowd control events include date and time stamps, as well as the videographer on the video.

Additionally, all video taken at crowd control events by Police Bureau personnel should have clear guidelines on access and use of the collected video, as well as having a retention period.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. Video taken by Police Bureau personnel should attempt to document the dynamic nature of a crowd control event as well as the actions of members of the public and officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with the videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

The Portland Police Bureau should not photograph individuals during a mass detention without a clear policy

On June 4, the Police Bureau identified and photographed 389 detained individuals without a clear policy on how those photos will be used, shared and retained. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau has no ability to address community concerns that the tactic will not be used as an attempt to chill free speech and dissenting voices.

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they
were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR said this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained protesters and their identification quickly became controversial with some community members.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4. He wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as it constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and said he believes the police additionally violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.

Police oversight agencies contacted by IPR in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. The Seattle Police Department said it does photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University law professor said she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor said that according to the U.S. Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada*, individuals must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither community members or Police Bureau staff that IPR contacted during this review were aware of prior instances of Bureau members photographing all detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial confusion on the topic when speaking to OPB. In a June 21 memo, Chief Marshman wrote
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to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are now subject to a legal hold, which prohibits their destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held indefinitely until staff are told to delete them.

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades, such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain activists and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect community values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

Recommendation:

12. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will be authorized to access the photos;
   • whether they will be shared with other law enforcement agencies; and
   • a deadline after which the photographs must be purged if there are no criminal charges.

Intergovernmental agreements need to be updated

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside agencies. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will
become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies that have less stringent use of force policies in an attempt to avoid the Portland Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating that cooperating outside agencies make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units like the Rapid Response Team. When tensions between opposing groups of protesters are as high as they were on June 4, the police must balance public safety concerns and be prepared. Portland faced the real risk of violence on June 4, and in reviewing the practices of a number of other police departments, the Police Bureau’s goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use.

While this policy review makes a number of recommendations that will hopefully lead to better Police Bureau policy and procedures for crowd control events we also recognize that they are incredibly dynamic and kinetic events. The reviewers had at their disposable an array of documents, video, and witness perspectives that Police Bureau personnel did not have available on June 4. A review of all the available material related to this event only serves to underscore significant dangers attached. Tensions in this community leading to the June 4 rally were at an elevated level. By all indications, members of the Police Bureau took their duties seriously and understood the gravity of their task. It is likely the planning, preparation, and actions of members of the Portland Police Bureau on June 4 prevented violent confrontations similar to those that occurred in a number of cities around the country during the summer of 2017.

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

2. For larger crowd control events, the Police Bureau should create a website, that is updated in real time, for it to better communicate with the public.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or
arrest was appropriately ordered and implemented.

7. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include a general prohibition on the detention of media and legal observers.

8. Video taken by Police Bureau personnel should attempt to document the dynamic nature of a crowd control event as well as the actions of members of the public and officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

12. The Police Bureau should not photograph individuals detained but not changed with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will be authorized to access the photos;
   - whether they will be shared with other law enforcement agencies; and
   - a deadline after which the photographs must be purged if there are no criminal charges.

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Methodology

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We also interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Several members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver (B.C.) Police Department.
Independent Police Review

Policy Review: Portland Police Bureau Response to June 2017 Rally & Protest must improve policies around crowd control practices

DATE

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City Auditor

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Portland, Oregon
Events Leading Up to and Including June 4 Protest

Protests have become common in Portland

Police grew concerned about the potential for violence

The Rapid Response Team focuses on large events

Groups assembled downtown

Officers seized property and eventually cleared Chapman Square

Police detained nearly 400 people at SW 4th and Morrison

Community Concerns received after June 4

Community members saw favoritism on June 4th

Community members saw an imbalance in communication and property seizure

Intergovernmental agreements need to be updated

Police use of mass detention during large events

Kettling/boxing in is a controversial tactic

Reasonable suspicion had by officers prior to mass detention not documented

Media or legal observers should not be detained without first being given an opportunity to comply with police requests

The Police Bureau needs a policy for mass detention and arrests

Police documentation of mass events also needs improvement

Community members feared police were intelligence-gathering

Police Bureau should not photograph individuals during a mass detention without a clear policy

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Summary

Political activism and protest have a long history in Portland. Since the 2016 Presidential election, Portland has become increasingly known as a center of political protest, activism, and encounters between crowds and police leading to more confrontation between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted significant attention from counter-protestors and law enforcement.

In the weeks leading up to the incident, the Portland Police Bureau became concerned that the protest may escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in a series of parks in downtown Portland. Community members perceived disparities in how the Portland Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests.

Tensions between the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members contacted the Independent Police Review (IPR) to voice concerns about perceived disparities in how the Portland Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests.

Several community members were concerned that the Police Bureau did not have sufficient legal justification for the detention of most of the people held on June 4. IPR found insufficient documentation by the Police Bureau to show its justification for the mass detention. Police reports also indicate that those detained were not questioned about disorderly conduct prior to their release.

The Police Bureau also photographed detained individuals without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines it cannot sufficiently address community concerns that the tactic will be used as an attempt to chill free speech and dissenting voices.
Following the June 4 rally, several community members contacted the Independent Police Review (IPR) to file complaints about the actions of the police. While some of the complaints were about the actions of individual Police Bureau officers, which were investigated separately, many dealt with broader issues better addressed in a policy review. IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. The development of policy, and in the case of directives, their opportunity for public comment, represents the Police Bureau’s best means to communicate with the public on what it considers appropriate tactics and behavior by its members.
**Events Leading Up to and Including June 4 Protest**

Protests have become common in Portland

Political activism and protest have a long history in Portland, dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day lead to multiple confrontations between police and protesters.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group, Patriot Prayer, scheduled rallies in Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose these cities to “liberate the conservatives on the West Coast.”

In late April, the conservative group, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protestors were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs prior to being escorted away by Portland Police.
Police officers.

After the stabbings, many called on Patriot Prayer to cancel its "Free Speech Rally" scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian's association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do, citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations, including the ACLU of Oregon which responded, "The government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period." Patriot Prayer said they would not cancel their event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

**Police grew concerned about the potential for violence**

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence, as had happened in other cities. The Police Bureau decided it would deploy their Rapid Response Team and issued a press release noting its concern for the potential for violence:

> There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

**The Rapid Response Team focuses on large events**

The Portland Police Bureau's Rapid Response Team, formed in 2001, is the unit most regularly deployed to mass events/occasions, including protests. The Bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are Officers volunteer for the team, are screened and receive additional training in Police Bureau-approved crowd control tactics and while maintaining a regular duty assignment, while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals, and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.
The Rapid Response Team is led by a captain, with a lieutenant serving as the executive officer, and is divided into several squads, each run by a sergeant. Each squad has a grenadier, usually an experienced member of the team who receives additional training. The grenadier is trained and authorized to use less-lethal weapons to protect other members of the team and to carry out objectives authorized by the Incident Commander. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.

In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to housing scenarios, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team’s response. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. These officers assist with arrests, property seizures, and other tasks.
More than 200 Police Bureau officers were deployed in response to the June 4 rally, from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of the Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff's Office Rapid Response Team were part of the police response.

Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

Police Bureau attempted to contact protest participants

In the weeks leading up to the incident, the Bureau monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence, as had happened in other cities.

The Special Events Sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also reached out to multiple people associated with Antifa and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

The Police Bureau also issued a press release noting its concerns for the potential of violence, warning that weapons and items that could be used as weapons faced possible seizure:

There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons.
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(firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

More than 200 Police Bureau officers were deployed in response to the rally in a range of functions, from serving as members of mobile field teams, to providing support at the Emergency Operations Center. Additionally, two squads of the Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4th in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon Street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.

Those associated with the Patriot Prayer Free Speech Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and stated the Antifa group planning to be in Chapman Square was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning, but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies, but added that the last time they worked with
Federal Protective Services during a significant event was during Occupy Portland in 2011.

Officers seized property and eventually cleared Chapman Square

Tensions between groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Terry Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a skirmish-line on SW Madison Street, facing north. A skirmish-line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages with the sergeant. When the sergeant told counter-protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in SW Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.

12:32 PM

The Police Bureau sound truck announced:

This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly
The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM

Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM

The sound truck broadcast 10 times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.

3:15 PM

The sound truck announced that the south side of Chapman Square was closed due to “criminal activity,” requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.
The sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square.

A group of roughly 200-300 protesters remained in SW Main Street and in Lownsdale Square to the north and was declared an unlawful assembly.

Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

Police detained nearly 400 people at SW 4th and Morrison

At 4:21 pm, counter-protesters originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police between SW Morrison and Alder Streets. Police stated they detained the group to investigate disorderly conduct. The detained, including several journalists, were not allowed to
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leave until they and their identification were individually photographed by police.

A squad of state troopers were able to get moved in front of the marchers at SW Alder Street and prevented the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street to the south. The Incident Commander ordered the detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Deputy Portland city attorney and a member of the Multnomah County District Attorney's Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained.

The sound truck announced twice that the group was detained at 4:23 p.m. The sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will order that police would be making arrests based upon probable cause. Subsequent messages from the sound truck specified that detainees were being identified and they should:

Between 4:30 p.m. and 5:23 p.m., the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your IDs ready and you will be processed three at a time. Your cooperation will speed the process. Once you Detainees were warned that once they were released, they should leave the area by if you do not leave the area you are or be subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.
The only reported use of force at the detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State trooper deployed less-lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:32 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to "speed up the process." IPR's review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release.

Commented [JK2]: We're just talking about this small group here right?
The only reported use of force during the mass detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State trooper deployed less-lethal pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. They were later released without being criminally charged.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

IPR received community concerns after June 4

After the June 4 protest, the ACLU of Oregon submitted written concerns about police bias against protesters, broad declarations of unlawful assembly, disproportionate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to the Police Bureau on operations and policy; however, ACLU leaders have said that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns reports of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on its website about the police response at the June 4 event, particularly about the mass detention that led to protesters being individually searched and photographed with their identification.

IPR’s Analysis of Police Action and Policies

Community members saw favoritism on June 4th

Community members saw an imbalance in communication and property seizure

Prior to June 4th, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms.
The Special Events sergeant also reached out to attempt to contact people associated with Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

During the event, the Special Events sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages with the sergeant. When the sergeant texted counter-protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

Several community members perceived disparities in how the Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for the Police Bureau to find a single point of contact to convey information.”

Attempting to contact all participants prior to an event is a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to fully communicate with Rose City Antifa prior to June 4. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, some community members said that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a full, transparent communication plan for specific events would add more clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and city code authority as well as strategies to disseminate information during the event like real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. These communication strategies should not require event attendees to interact with an officer to get information.

Some community members saw favoritism in property seizure.

Several community members perceived disparities in how the Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader.
which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members expressed concerns about objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.”

This specific concern variation could be attributed to jurisdictional differences in policies about the confiscation of property between federal and local jurisdictions. Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter-protestors in and around Chapman Square.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.
Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter-protestors in and around Chapman Square.

Additionally, there were a number of weapons left behind by some individuals detained at SW 4th and Morrison.

Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, we recommend the Bureau add them to the Directive 635.10 (Crowd Management/Crowd Control).

**Intergovernmental agreements need to be updated**

Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

The intergovernmental agreements are also silent as to mandating that cooperating outside agencies make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees. We recommend that the City modify existing agreements and require outside agencies cooperate with the City’s administrative investigation process.

**Recommendation:**

1. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.
The Police Bureau should create an event specific website for larger crowd control events

Attempting to contact all participants prior to an event is a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to communicate with Rose City Antifa prior to June 4. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and in statements to media, but a website may provide a single, centralized place updated in real time for such information.

Recommendation:

2. For larger crowd control events, the Police Bureau should create a website, that is updated in real time, for it to better communicate with the public.

Police use of mass detention during a crowd control event

Kettling/boxing-in is a controversial tactic

In the days following the June 4 protest, community members contacted IPR stating to report that the Police Bureau had “kettled” protesters at SW 4th Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protesters, and controlling access in and out of the area. Activist groups and media generally call this tactic a kettle, while the Police Bureau generally refers to the tactic as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student

Kettle derives from the German word Kessel, which translates as either kettle or cauldron. A kettle also describes a military tactic, where a large force will surround an opposing force, separating it from external support and the surrounded force is eventually made ineffective as a fighting force.
The Police Bureau’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri, grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment area for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protesters on all sides. The built environment of downtown Portland buildings Downtown Portland’s built environment aided the officers in containing the marchers. Those detained at SW 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

**Kettling/boxing-in is a controversial tactic**

The kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. A legal observer present at Chapman Square and the ACLU legal director said it was unlikely that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the group. There is also disagreement between those who believe the police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials that IPR spoke to said the box-in can be effective but noted that there are also logistical issues challenges involved with the use of the tactic. A former Police Bureau incident commander said a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

Legal experts believe mass detention by law enforcement may be constitutionally permissible but requires significant justification. A Lewis and Clark University law professor interviewed during an investigation of the 2014 mass detention and arrest referenced the U.S. Supreme Court case Terry v. Ohio and said police would need reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor said the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.”
indicated officers may use their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University law professor interviewed by IPR said public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor said community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

**Lack of documentation of reasonable suspicion had by officers prior to mass detention not documented**

Some community members raised concerns that there was not a sufficient basis given for all the persons detained said they were not told why they were detained on June 4. IPR found little documentation by the Police Bureau of the what led officers to have reasonable suspicion had by officers prior to the crowd’s detention for of an individual’s disorderly conduct. Police reports indicate that those detained were not questioned about disorderly conduct prior to their release.

Courts allow police to temporarily detain individuals if there is reasonable suspicion that the detained person was involved in a crime.

An ACLU of Oregon legal observer present at Chapman Square and the ACLU legal director said there was “no way” that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Although those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct, which is a misdemeanor (ORS 166.025, Class B misdemeanor), a review of the police reports and video provided by the Police Bureau video finds provided little documentation of crowd behavior that would articulate the officers’ reasonable suspicion of a crime prior to the detention of the marchers. No witnesses were interviewed by officers regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification they provided officers, it appears that no detained marchers were questioned about whether they had engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify individuals who were detained, not question them.
Media or legal observers should not be detained without first being given an opportunity to comply with police requests

Several journalists were detained with the group were among those detained. They were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release. Although police policy currently speaks to the arrest of media members, it does not include information on the detention of media members. Police Bureau Directive 635.10 (Crowd Control) addresses the arrest of media and legal observers, but does not cover detention:

Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of nationalist groups and antifascists. The detention of so many members of the media could be perceived as the City attempting suppress media coverage of the protest.

The Police Bureau needs a policy for mass detention and arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing any kind of stops and/or temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau, create a stop policy to govern the actions of its members when they engage in stops and other forms of temporary detention during their regular duties. The Police Bureau should also and amend its crowd control directive to prohibit the use of mass detention or arrest absent a compelling government interest.

Without a Police Bureau policy on stops or temporary detentions, members of the public may be unaware of their rights in situations where they are stopped by police, such as the right to leave or not answer an officer’s question if the encounter is considered “mere conversation.”
The lack of a Police Bureau policy specifically regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws.

In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public to better understand police goals and for the Police Bureau to understand community preferences about strategies to achieve them. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive against bystanders by some. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators;
- include a general prohibition on the detention of media and legal observers;
- consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.
Additionally, whenever there is a mass detention or arrest at a crowd control event, it should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether it was appropriately ordered and implemented.

Media or legal observers should not be detained without first being given an opportunity to comply with police requests

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune, and Vice Media. Journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release. Police policy currently speaks to the arrest of media members, but does not include information on the detention of media members. Directive 635.10 (Crowd Control) addresses the arrest of media and legal observers:

*Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and may be subject to arrest for failure to do so.*

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns of the City attempting to suppress media coverage of the protest.

Recommendation:

7. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include a general prohibition on the detention of media and legal observers.
Police documentation of mass events also needs improvement

The Police Bureau often documents mass events through video recording to record officers’ actions and to aid in criminal prosecutions. Additional improvements are needed to make the Bureau’s documentation efforts a more useful tool.

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years, but despite the improvement, there remain gaps in video collected due to the limited number and vantage points provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quickly moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators. Better video collection efforts will promote the community and City’s shared goal of greater accountability at crowd control events.

In the event’s June 4 event After-Action Review, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team squad members, there should be video that captures interactions between officers and demonstrators from a distance that reflects larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time, date, or the videographer who recorded it. This information is important to ensure accuracy and help understand complex situations. We recommend that Police Bureau video of crowd control events include date and time stamps, as well as the videographer on the video.

Additionally, all video taken at crowd control events by Police Bureau personnel should have clear guidelines on access and use of the collected video, as well as having a retention period.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. Video taken by Police Bureau personnel should attempt to document the dynamic nature of a crowd control event as well as the actions of members of the public and officers.
9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with the videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

Community members feared police were intelligence-gathering

On June 4, the Police Bureau identified and photographed 389 detained individuals without a clear policy on how those photos will be used, shared and retained. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau has no ability to address community concerns that the tactic will not be used as an attempt to chill free speech and dissenting voices.

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR said this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained protesters and their identification quickly became controversial with some in the community members.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau, or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment
rights, and violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation, as it constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and said he believes the police additionally violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.”

Police oversight agencies contacted by IPR in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. The Seattle Police Department said it does photograph protesters as part of the arrest process but added that they have an ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University law professor said she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor said that according to the U.S. Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada*, individuals must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither community members or Police Bureau staff that IPR contacted during this review were aware of prior instances of Police Bureau members photographing all individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial confusion on the topic when speaking to OPB. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and said they would be retained indefinitely by the Police Bureau unless they were explicitly ordered to be removed.

Additionally, the photos are now subject to a legal hold due to the pending ACLU lawsuit. The Police Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held indefinitely until staff are told to delete them.

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades, such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain activists and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being.
shared with other law enforcement agencies.

It is important that a written policy reflect community values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

Recommendation:

12. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
- who within the Police Bureau will be authorized to access the photos;
- whether they will be shared with other law enforcement agencies; and
- a deadline after which the photographs must be purged if there are no criminal charges.

Intergovernmental agreements need to be updated

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside agencies. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies that have less stringent use of force policies in an attempt to avoid the Portland Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.

Finally, the intergovernmental agreements are silent as to mandating that cooperating outside agencies make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

13. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.
14. Intergovernmental agreements should be updated to require outside agencies cooperate with the City's administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units like the Rapid Response Team. When tensions between opposing groups of protesters are as high as they were on June 4, the police must balance public safety concerns and be prepared. Portland faced the real risk of violence on June 4, and in reviewing the practices of a number of other police departments, the Police Bureau’s goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

While this policy review makes a number of recommendations that will hopefully lead to better Police Bureau policy and procedures for crowd control events we also recognize that they are incredibly dynamic and kinetic events. The reviewers had at their disposable an array of documents, video, and witness perspectives that Police Bureau personnel did not have available on June 4. A review of all the available material related to this event only serves to underscore significant dangers attached. Tensions in this community leading to the June 4 rally were at an elevated level. By all indications, members of the Police Bureau took their duties seriously and understood the gravity of their task. It is likely the planning, preparation, and actions of members of the Portland Police Bureau on June 4 prevented violent confrontations similar to those that occurred in a number of cities around the country during the summer of 2017.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   - create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   - have a transparent and coherent communication strategy for it to better communicate with the public prior to and during large crowd control events;
   - update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. For larger crowd control events, the Police Bureau should create a website, that is updated in real time, for it to better communicate with the public.
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3.2. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

3. To address issues with mass detentions and arrests the Police Bureau should:
   4. • not utilize mass detentions or arrests absent a compelling governmental interest;
   5. • amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   6. • determine in the after-action review whether any mass detentions or arrests was appropriately ordered and implemented.

6. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests.

7. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

8. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include a general prohibition on the detention of media and legal observers.

9. Video taken by Police Bureau personnel should attempt to document the dynamic nature of a crowd control event as well as the actions of members of the public and officers.

4. Video footage taken at crowd control events by to better document crowd control events, Police Bureau personnel should:
   5. • time and date stamp all video footage with videographer’s name;
   6. • attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   7. • preserve and archive audio transmissions between officers during crowd control events; and
   8. • create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

10. Video taken by Police Bureau personnel should attempt to document the dynamic nature of a crowd control event as well as the actions of members of the public and officers.

11. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

12. Policies for audio and video recordings of crowd control events should have clear use and retention guidelines.

13. The Police Bureau should not photograph individuals detained but not changed with a crime absent a written policy governing the use of the photos. Such a policy should include:
   14. • who within the Police Bureau will be authorized to access the photos;
   15. • whether they will be shared with other law enforcement agencies; and
   16. • a deadline after which the photographs must be purged if there are no criminal charges.
14. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events.

15. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Methodology

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned. During a policy review, the assigned staff will review relevant Police Bureau policy, talk to community members and Bureau staff, and review collected documents. It is IPR’s practice to conclude a policy review with a public report that allows community members access to the review team’s work and recommendations.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We also interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Several members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver (B.C.) Police Department.
Event Timeline

12:32 PM

The Police Bureau sound truck announced:

This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM

Officers located on SW Madison said individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM

The sound truck broadcast 10 warnings to both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM

The police estimated by this time there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.
The sound truck announced that the south side of Chapman Square was closed because of “criminal activity,” requesting that those present move to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.

The sound truck made the following announcement:

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance when they reached the north side of Chapman Square.

A group of roughly 200-300 protesters remained in SW Main Street and Lownsdale Square and was declared an unlawful assembly.

Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.
Nearly 400 counter-protestors, media members and legal observers were detained by members of the Portland Police Bureau and Oregon State Police on SW 4th between SW Morrison and Alder. A squad of state troopers moved in front of the marchers at SW Alder Street and prevented the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street. The Incident Commander ordered the detention to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center.

The sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

The sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

Portland police finished processing those detained.
Policy Review:

Portland Police Bureau can improve its approach to crowd control during street protests

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City Auditor

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Director, Independent Police Review

Office of the City Auditor
Portland, Oregon
# Summary

Events Leading Up to and Including June 4 Protest

- Protests have become common in Portland
- Police grew concerned about the potential for violence
- The Rapid Response Team focuses on large events
- Groups assembled downtown
- Officers seized property and eventually cleared Chapman Square
- Police detained nearly 400 people at SW 4th and Morrison

IPR received community concerns after June 4

- Community members saw favoritism on June 4
- Community members saw an imbalance in communication and property seizure

Intergovernmental agreements need to be updated

Police use of mass detention during large events

- Kettling/boxing-in is a controversial tactic
- Reasonable suspicion had by officers prior to mass detention not documented
- Media or legal observers should not be detained without first being given an opportunity to comply with police requests
- The Police Bureau needs a policy for mass detention and arrests
- Police documentation of mass events also needs improvement

Community members feared police were intelligence-gathering

- Police Bureau should not photograph individuals during a mass detention without a clear policy

Recommendations

Methodology
Event Timeline
Summary

Since the 2016 Presidential election, there has been an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted attention from counter-protestors and law enforcement.

In the weeks leading up to the incident, Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members objected to what they described as different treatment among the various groups of protesters and the legal justification for detaining people on June 4. During its investigation into the protestors’ allegations, Independent Police Review (IPR) found insufficient documentation by the Police Bureau to justify the mass detention.

The Police Bureau also photographed individuals during the mass detention without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address fear among some in the community that the tactic will be used to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides the opportunity for dialogue between community members and the Police Bureau about appropriate police tactics and behavior at protests that could lead to arrests.
Events Leading Up to and Including June 4 Protest

Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day were marked by multiple confrontations between police and protesters. Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood in East Portland. Counter-protestors resisted the Patriot Prayer group, including members of Rose City Antifa, an anti-fascist group, as it marched down Southeast 82nd Avenue. Police arrested three counter-protestors during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene with a man yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence as had happened in other cities. The Police Bureau decided it would deploy its Rapid Response Team and issued a press release noting the potential for violence:

_There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons_
attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

**Rapid Response Team focuses on large events**

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly sent to large events, including protests. Officers volunteer for the team, are screened, and receive additional training in crowd control tactics while maintaining a regular duty assignment.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets. In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to help during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

The Police Bureau also uses Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. These officers assist with arrests, property seizures, and other tasks.
More than 200 Police Bureau officers were present at the June 4 rally. Two squads of the Oregon State Police and a squad from the Multnomah County Sheriff’s Office were part of the police presence.

**Groups assembled downtown**

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those protesting the Patriot Prayer Rally. The largest group of counter-protestors, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

**Officers seized property and eventually cleared Chapman Square**

Tension among groups in Chapman Square and Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.
Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Schrunk Plaza to separate the opposing demonstrators. Two squads from the Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south toward Schrunk Plaza.

During the rally, individuals in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. Some people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects and to move to the north out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.

**Police detained nearly 400 people at Southwest 4th and Morrison**

At 4:21 pm, Police Bureau officers and Oregon State Police detained counter-protesters who had moved from Chapman Square to Southwest 4th Avenue between Morrison and Alder Streets. The group, including several journalists, were not allowed to leave until police photographed them holding their identification.

A squad of state troopers moved in front of the marchers at Alder Street and prevented them from continuing north on 4th Avenue, while a Rapid Response Team squad blocked Morrison Street. The Incident Commander ordered that the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR’s review of police reports filed by Field Arrest Teams showed the Police Bureau photographed 389 people.
The Police Bureau used a sound truck to deliver warnings to the group, including two announcements that members would be detained for the investigation of disorderly conduct and that police would be making arrests based on probable cause. Subsequent messages from the sound truck specified that those detained should show their identification. Those without identification were required to provide contact information. Police warned that once people were released, they should leave or face arrest. There is no record of a dispersal order or a warning being given at Southwest 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

While officers arrested some, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.”
Several journalists were detained along with protestors, representing the *Coos Bay World*, Getty Images, *The Oregonian*, *Willamette Week*, *Portland Tribune* and Vice Media. The journalists were processed similar to the protestors, required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of the intersection of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them, but none were charged with a crime.

During the mass detention, Federal Protective Services officers closed Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza, where police broke up scuffles among various groups of protestors as people left the area.

Community members objected to treatment by police

Twenty-seven community members filed complaints with IPR related to the June 4 protest. Their objections fell into three broad areas:

1. Perceptions that police favored one group over another;
2. Use of a detention tactic that swept up innocent bystanders; and,
3. Forcing people who were detained to be photographed holding their identification without evidence they had engaged in criminal activity.

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. Patriot Prayer representatives assured the sergeant their participants would not bring firearms.

The sergeant also attempted to contact representatives of Rose City Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain
physically separated from the Patriot Prayer group and express their concerns verbally, not physically.

During the event, the sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages. When the sergeant texted counter-protest organizers in Chapman Square to call attention to people throwing bricks and water bottles at police, the organizers denied it.

Several community members perceived disparities in how the Police Bureau treated the different groups, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. A lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently because Rose City Antifa lacked a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney said things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Schrunk Plaza could have “giant flag poles.”

This variation could be attributed to differences in policies about the confiscation of property between federal and local jurisdictions. Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Federal Protective Police checked bags and individuals at they entered Schrunk Plaza. Portland Police worked outside Schrunk Plaza, so officers mostly seized property from counter-protestors in and around Chapman Square.

*Items seized by Portland Police.*
*via @PortlandPolice on Twitter.*
Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows police to preemptively take custody of property that may be used in the commission of a crime.

After-action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were photographed and displayed on the Police Bureau’s Twitter feed.

Additionally, there were weapons left by some individuals detained at Southwest 4th and Morrison.
Community members objected to mass detention

In the days following the June 4 protest, community members reported that the Police Bureau had “kettled” protesters at Southwest 4th Avenue and Morrison Street. Kettle is a term used by protestors to describe the crowd-control tactic when officers surround a group and control access in and out of the area. The Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

During the June 4 protest, officers used buildings on either side of the street to help contain the marchers. Those detained at Southwest 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The kettle/box-in is controversial among activists for several reasons. One is that they can sweep in bystanders not involved in any disruptive or illegal activity, especially in a city block in the middle of the day while businesses were open. There is also disagreement between those who believe the use of a kettle de-escalates a potentially violent situation and those who believe it does the opposite.

Law enforcement officials said the box-in can be effective but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” The Vancouver, British Columbia, Police Department said it does not use this type of containment because of the number of officers required and human rights considerations.

Reasonable suspicion of disorderly conduct not documented

Courts allow police to temporarily detain an individual if there is reasonable suspicion that the person was involved in a crime.

IPR found little documentation by the Police Bureau describing evidence that supported officers’ reasonable suspicion of an individual’s disorderly conduct. Police reports indicated that those detained were not questioned about disorderly conduct prior to their release. Some community members said they were not told why they were detained.
Police records show they were held for further investigation of disorderly conduct, which is a misdemeanor. Available Police Bureau video of crowd behavior prior to the detention of the marchers did not appear to support allegations of disorderly conduct. Officers interviewed no witnesses about the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing that marchers obstructed vehicles or pedestrians or any of the other elements required by the disorderly conduct statute.

Police reports documented the individuals detained and the forms of identification they provided, but not evidence of statements indicating they engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify individuals who were detained, not question them.

Community members feared police would misuse personal information collected at the protest

On June 4, the Police Bureau individually photographed 389 people and their identification before allowing them to leave the mass detention area. Officers directed individuals wearing masks or disguises to protect their identity to remove them prior to being released.

In complaints filed with IPR, community members feared the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether photographing people and their identification constituted a form of intelligence gathering by the Police Bureau.

The ACLU contends photographing the individuals with their identification during a protest was a violation of their Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.

Police accountability agencies in Washington, D.C. and Berkeley, Calif., said their departments do not use this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but a local ordinance prevents officers from photographing people unless crimes have been committed.

The Police Bureau has no policy to guide if photographs should be taken at large events and how they subsequently may be used, shared, or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau has no ability to address community concerns that the photographs and identification will not be misused to chill free speech and dissenting voices.

Police Bureau command staff defended the tactic, saying it was part of an investigation into the attempted assault on officers with bricks and other objects.
Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware that photos were taken of people and their identification on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not the Bureau’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

In a June 21 memo to Mayor Wheeler, Chief Marshman wrote that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR learned the Police Bureau still had the photos of the individuals and their identification in its possession. The Police Bureau does not have a retention policy for digital image data, allowing for photos to be held permanently until staff are told to delete them. The Police Bureau said the photographs would be retained indefinitely unless they were explicitly ordered to be removed. Now they are subject to a legal hold in response to a lawsuit, which prohibits their destruction.

**Policy Conclusions**

**Better communication during planning would help public understand expectations during large events**

The Police Bureau prudently attempted to contact participants prior to the protests Police Bureau personnel indicated the Special Events sergeant was unable to fully communicate with Rose City Antifa prior to June 4, because it did not have specific leaders or organizers as the other groups had. While this presented a challenge, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement.

Some community members said that they were unaware of the Police Bureau’s authority or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases but should have a comprehensive, transparent communication plan for specific events to add clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and City Code authority, as well as descriptions of methods used to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor in real-time. These communication strategies should not require participants to interact with an officer to get information.

**Police Bureau needs policies to govern mass detentions and arrests**
The absence of a policy that addresses mass detentions and arrests presents risk for the City. A well-reasoned policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on the policy. It would provide the opportunity to craft a document that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could be weighed against the governmental interests the Police Bureau seeks to advance when it uses mass detention or arrest during protests.

A mass detention and arrest policy should:
- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators prior to detention;
- include a general prohibition on the detention of media and legal observers;
- consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

**Better recorded evidence would benefit post-event investigations and reviews**

The Police Bureau often documents mass events through videos to record officers’ actions and aid in criminal prosecutions. It has improved and expanded its videotaping capacity during crowd control activities in recent years, but gaps remain because of the limited number of cameras and vantage points provided by Police Bureau videographers.

Video is often taken by Forensic Evidence Division criminalists from behind police lines. During larger, quickly moving events, videographers may not be well-positioned to record events of value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd
control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document incidents during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

**Intergovernmental agreements need to be updated**

Although intergovernmental agreements between the Police Bureau and other agencies may be reviewed annually, they date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies' directives when participating in large events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive but is not included in the agreements among agencies. Such language will become more important as the Police Bureau’s directives, particularly those governing use-of-force, are updated to be more restrictive than those used by partner agencies.

The agreements also do not require other agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.
Recommendations

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. **To improve consistency in the way community members are treated, the Police Bureau should:**
   - create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   - have a transparent and comprehensive strategy to better communicate with the public prior to and during large crowd control events;
   - update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s use-of-force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. **The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.**

3. **To address issues with mass detentions and arrests the Police Bureau should:**
   - not use mass detentions or arrests absent a compelling governmental interest;
   - amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   - determine in the after-action review whether any mass detentions or arrests was appropriately ordered and implemented.

4. **To better document crowd control events, Police Bureau personnel should:**
   - make use of Go-Pro cameras on individual officers and position other cameras from a distance to capture group dynamics;
   - time and date stamp all video footage with videographer’s name;
   - attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   - preserve and archive audio transmissions between officers during crowd control events; and
   - create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

5. **The Police Bureau should not photograph individuals who have been detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:**
   - who within the Police Bureau will be authorized to access the photos;
• whether they will be shared with other law enforcement agencies; and
• a deadline after which the photographs must be purged if there are no criminal charges.
Methodology

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Some members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver, British Columbia, Police Department.
Event Timeline

12:32 PM  The Police Bureau sound truck announced:

*This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.*

The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM  Officers located on SW Madison said individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM  The sound truck broadcast 10 warnings to both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM  The police estimated by this time there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.
The sound truck announced that the south side of Chapman Square was closed because of “criminal activity,” requesting that those present move to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.

The sound truck made the following announcement:

*This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.*

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance when they reached the north side of Chapman Square.

A group of roughly 200-300 protesters remained in SW Main Street and Lownsdale Square and was declared an unlawful assembly.

Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.
Nearly 400 counter-protestors, media members and legal observers were detained by members of the Portland Police Bureau and Oregon State Police on SW 4th between SW Morrison and Alder. A squad of state troopers moved in front of the marchers at SW Alder Street and prevented the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street. The Incident Commander ordered the detention to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center.

The sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

The sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

Portland police finished processing those detained.
Independent Police Review

Policy Review: Portland Police Bureau must improve policies around crowd control practices

DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
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Summary

Since the 2016 Presidential election, there have been an increase in political protests leading to more confrontation between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted significant attention from counter-protestors and law enforcement.

In the weeks leading up to the incident, the Portland Police Bureau became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in a series of parks in downtown Portland. Tensions between the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members contacted the Independent Police Review (IPR) to voice concerns about how the Police Bureau treated the different groups of protesters and the legal justification for detaining people on June 4. IPR found insufficient documentation by the Police Bureau to show its justification for the mass detention.

The Police Bureau also photographed detained individuals without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines it cannot sufficiently address community concerns that the tactic will be used as an attempt to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. The development of policy, and in the case of directives, their opportunity for public comment, represents the Police Bureau’s best means to communicate with the public on what it considers appropriate tactics and behavior by its members.
**Events Leading Up to and Including June 4 Protest**

**Protests have become common in Portland**

Political activism and protest have a long history in Portland, dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day led to multiple confrontations between police and protesters.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, an anti-fascist group, as they marched down SE 82nd Avenue. Three counter-protestors were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of these concerns, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested...
that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech concerns. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

**Police grew concerned about the potential for violence**

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence, as had happened in other cities. The Police Bureau decided it would deploy their Rapid Response Team and issued a press release noting its concern for the potential for violence:

*There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.*

**The Rapid Response Team focuses on large events**

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly deployed to large events, including protests. Officers volunteer for the team, are screened and receive additional training in crowd control tactics while maintaining a regular duty assignment.

The Rapid Response Team is a led by a captain, with a lieutenant serving as the executive officer, and is divided into several squads, each run by a sergeant. Each squad has a grenadier, who is trained and authorized to use less-lethal weapons to protect other members of the team and carry out objectives authorized by the Incident Commander. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.
In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

Rapid Response Team squads and units from other law enforcement agencies train together using scenarios, while command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team’s response. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. These officers assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were deployed in response to the June 4 rally, from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of the Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government. There were three locations for those interested in protesting the Patriot Prayer Rally. The largest group of counter-protestors, including
members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

**Officers seized property and eventually cleared Chapman Square**

Tensions among groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Terry Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a line on SW Madison Street, facing north. A line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in SW Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.
Police detained nearly 400 people at SW 4th and Morrison

At 4:21 pm, counter-protesters originally located in Chapman Square were detained by members of the Police Bureau and Oregon State Police on SW 4th Avenue between SW Morrison and Alder Streets. Police said they detained the group to investigate disorderly conduct. The detained, including several journalists, were not allowed to leave until they and their identification were individually photographed by police.

A squad of state troopers moved in front of the marchers at SW Alder Street and prevented the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street. The Incident Commander ordered the detention to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained.

The sound truck announced twice that the group was detained for the investigation of disorderly conduct and that police would be making arrests based upon probable cause. Subsequent messages from the sound truck specified that detainees were being identified and they should have IDs to be processed. Detainees were warned that once they were released, they should leave the area or be subject to arrest. There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the
process.” IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people.

Among the detained were several journalists, including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of the intersection of SW 4th and Morrison when an Oregon State trooper deployed less-lethal pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. They were later released without being criminally charged.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles among various groups of protesters, as people left the area.

**IPR received community concerns after June 4**

After the June 4 protest the ACLU of Oregon submitted written concerns about police bias against protesters, broad declarations of unlawful assembly, disproportionate use of force, and the use of mass arrests and detention as crowd control. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

Individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with reports of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa objected on its website to the police response at the June 4 event, particularly about the mass detention that led to protesters being individually searched and photographed with their identification.
Community members saw favoritism on June 4

Community members saw an imbalance in communication and property seizure

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms.

The Special Events sergeant also attempted to contact persons associated with Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

During the event, the Special Events sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages with the sergeant. When the sergeant texted counter-protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

Several community members perceived disparities in how the Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Attempting to contact all participants prior to an event is a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to fully communicate with Rose City Antifa prior to June 4. However, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with the Police Bureau.

During this review, some community members said that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a full, transparent communication plan for specific events would add more clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and city code authority as well as strategies to disseminate information during the
event like real time sound truck warnings, concerns about crowd behavior, and actions taken by officers. These communication strategies should not require event attendees to interact with an officer to get information.

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.”

This variation could be attributed to differences in policies about the confiscation of property between federal and local jurisdictions. Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers mostly seized property from counter-protestors in and around Chapman Square.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After-action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were photographed and displayed on the Police Bureau’s Twitter feed.
Additionally, there were a number of weapons left behind by some individuals detained at SW 4th and Morrison. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, we recommend the Bureau add them to the Directive 635.10 (Crowd Management/Crowd Control).

**Intergovernmental agreements need to be updated**

Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

The intergovernmental agreements are also silent as to mandating that cooperating outside agencies make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees. We recommend that the City modify existing agreements and require outside agencies cooperate with the City’s administrative investigation process.

**Police use of mass detention during large events**

**Kettling/boxing-in is a controversial tactic**

In the days following the June 4 protest, community members contacted IPR to report that the Police Bureau had “kettled” protesters at SW 4th Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protesters, and control access in and out of the area. Activist groups and media generally call this tactic a kettle, while the Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

The Police Bureau’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a St. Louis County, Missouri, grand jury not to
A white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment area for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protesters on all sides. Downtown Portland’s built environment aided the officers in containing the marchers. Those detained at SW 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The kettle/box-in is controversial among activists for several reasons. One is the possible detention of bystanders not involved in any disruptive or illegal activity. A legal observer present at Chapman Square and the ACLU legal director said it was unlikely that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the group. There is also disagreement between those who believe the use of a kettle de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials that IPR spoke to said the box-in can be effective but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

**Reasonable suspicion had by officers prior to mass detention not documented**

Some community members said they were not told why they were detained on June 4. IPR found little documentation by the Police Bureau of what led officers to have reasonable suspicion of an individual’s disorderly conduct. Police reports indicate that those detained were not questioned about disorderly conduct prior to their release.

Courts allow police to temporarily detain individuals if there is reasonable suspicion that the detained person was involved in a crime.

Although those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct, which is a misdemeanor, police reports and Police Bureau video provide little documentation of crowd behavior that would articulate the officers’ reasonable suspicion of a crime prior to the detention of the marchers. No witnesses were interviewed by officers.
regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no videos or reports showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification they provided, it appears that no detained marchers were questioned about whether they had engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify individuals who were detained, not question them.

**Media or legal observers should not be detained without first being given an opportunity to comply with police requests**

Several journalists were among those detained. They were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release. Police Bureau Directive 635.10 (Crowd Control) addresses the arrest of media and legal observers, but does not cover detention:

> Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of nationalist groups and antifascists. The detention of so many members of the media could be perceived as the City attempting to suppress media coverage of the protest.

**The Police Bureau needs a policy for mass detention and arrests**

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing any kind of stop or temporary detention. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau create a stop policy to govern the actions of its members when they engage in stops and other forms of temporary detention during their regular duties. The Police Bureau should also amend its crowd control directive to prohibit the use of mass detention or arrest absent a compelling government interest.
The lack of a Police Bureau policy specifically regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws.

In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public to better understanding of police goals and for the Police Bureau to understand community preferences about strategies to achieve them. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive against bystanders. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators;
- include a general prohibition on the detention of media and legal observers;
- consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, it should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Police detained hundreds of people who were not allowed to leave until they and their identification were photographed. Courtesy of Pamplin Media Group
Police documentation of mass events also needs improvement

The Police Bureau often documents mass events through video recording to record officers’ actions and to aid in criminal prosecutions. It has improved and expanded its efforts at videotaping its crowd control activities in recent years, but there remain gaps in video collected because of the limited number and vantage points provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quickly moving events, Police Bureau videographers may not be in a proper position to record events of value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

In the June 4 event after-action review, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video-recorded activities. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team members, there should be video that captures interactions between officers and demonstrators from a distance that reflects larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time, date, or the person who recorded it. This information is important to ensure accuracy and help understand complex situations. We recommend that that Police Bureau video of crowd control events include date and time stamps, as well as the videographer on the video. All video taken at crowd control events by Police Bureau personnel should also have clear guidelines on access and use of the collected video, as well as having a retention period.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

Community members feared police were intelligence-gathering

Police Bureau should not photograph individuals during a mass detention without a clear policy

On June 4, the Police Bureau identified and photographed 389 people without a clear policy on how those photos will be used, shared and retained. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines the Police Bureau, has no ability to address community concerns that the tactic will not be used as an attempt to chill free speech and dissenting voices.
Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR said this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the protesters and their identification quickly became controversial in the community.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of individuals on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

Many community members contacted IPR fearing the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau. The Police Bureau said photographing people and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

The ACLU legal director felt that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.

Police oversight agencies in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. The Seattle Police Department said it does photograph protesters as part of the arrest process but added that they have an ordinance that prevents them from photographing crowds until crimes are committed.

Neither community members or Police Bureau staff that IPR contacted during this review were aware of prior instances of Police Bureau members photographing all individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial confusion on the topic when speaking to OPB. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau said they would be retained indefinitely by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are now subject to a legal hold in response to a lawsuit, which prohibits their destruction. The Police Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held permanently until staff are told to delete them.

Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or
that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect community values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices.
Recommendations

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   • create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   • have a transparent and coherent communication strategy for it to better communicate with the public prior to and during large crowd control events;
   • update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

3. To address issues with mass detentions and arrests the Police Bureau should:
   • not use mass detentions or arrests absent a compelling governmental interest;
   • amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   • determine in the after-action review whether any mass detentions or arrests was appropriately ordered and implemented.

4. To better document crowd control events, Police Bureau personnel should:
   • time and date stamp all video footage with videographer’s name;
   • attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   • preserve and archive audio transmissions between officers during crowd control events; and
   • create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

5. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will be authorized to access the photos;
   • whether they will be shared with other law enforcement agencies; and
   • a deadline after which the photographs must be purged if there are no criminal charges.
Methodology

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned. During a policy review, the assigned staff will review relevant Police Bureau policy, talk to community members and Bureau staff, and review collected documents. It is IPR’s practice to conclude a policy review with a public report that allows community members access to the review team’s work and recommendations.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We also interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Several members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver (B.C.) Police Department.
Event Timeline

12:32 PM

The Police Bureau sound truck announced:

This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM

Officers located on SW Madison said individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM

The sound truck broadcast 10 warnings to both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM

The police estimated by this time there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.
3:15 PM

The sound truck announced that the south side of Chapman Square was closed because of “criminal activity,” requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.

3:27 PM

The sound truck made the following announcement:

*This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.*

3:30 PM

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

3:30 PM-4:14 PM

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance when they reached the north side of Chapman Square.

3:51 PM

A group of roughly 200-300 protesters remained in SW Main Street and Lownsdale Square and was declared an unlawful assembly.

4:05 PM

Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.
Nearly 400 counter-protestors, media members and legal observers were detained by members of the Portland Police Bureau and Oregon State Police on SW 4th between SW Morrison and Alder. A squad of state troopers moved in front of the marchers at SW Alder Street and prevented the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street. The Incident Commander ordered the detention to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center.

The sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

The sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

Portland police finished processing those detained.
Independent Police Review

Policy Review: Portland Police Bureau must improve policies around crowd control practices

DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
**Summary**

Since the 2016 Presidential election, there have been an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted significant attention from counter-protestors and law enforcement.

In the weeks leading up to the incident, the Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent series of parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members contacted the Independent Police Review (IPR) to object concerns to what they described as about how the Police Bureau differently treated different groups of protesters and the legal justification for detaining people on June 4. During its investigation into the protestors’ allegations, Independent Police Review (IPR) found insufficient documentation by the Police Bureau to show its justification for the mass detention.

The Police Bureau also photographed detained individuals without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address community fear among some in the community that the tactic will be used as an attempt to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides of policy, and in the case of directives, their opportunity for dialogue between community members and public comment, represents the Police Bureau’s best means to communicate with the public on what it considers appropriate police tactics and behavior at protests that could lead to arrests by its members.
Protests have become common in Portland

Political activism and protest have a long history in Portland, dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day were marked by multiple confrontations between police and protesters.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood in East Portland. Counter-protestors resisted the Patriot Prayer group was met with resistance from various counter-protesters, including members of Rose City Antifa, an anti-fascist group, as they marched down Southeast 82nd Avenue. Police arrested three counter-protestors were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would
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escalate into physical violence, as had happened in other cities. The Police Bureau decided it would deploy their Rapid Response Team and issued a press release noting its concern for the potential for violence:

There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, in violation of city, state or federal law, the possessor may be arrested and charged criminally.

The Rapid Response Team focuses on large events

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly deployed to large events, including protests. Officers volunteer for the team, are screened and receive additional training in crowd control tactics while maintaining a regular duty assignment.

The Rapid Response Team is led by a captain, with a lieutenant serving as the executive officer, and is divided into several squads, each run by a sergeant. Each squad has a grenadier, who is trained and authorized to use less-lethal weapons to protect other members of the team and carry out objectives authorized by the Incident Commander.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.

In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

Rapid Response Team squads and units from other law enforcement agencies train together
using scenarios, while command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. These officers assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were present in response to the June 4 rally, from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of the Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police presence.

**Groups assembled downtown**

Patriot Prayer members and various counter-protesters convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups...
didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

**Officers seized property and eventually cleared Chapman Square**

Tensions among groups in Chapman Square and Terry-Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Terry-Schrunk Plaza to separate the opposing demonstrators. Two squads from the Police Bureau Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south towards Schrunk Plaza.

During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.

**Police detained nearly 400 people at Southwest 4th and Morrison**

At 4:21 pm, counter-protesters originally located in Chapman Square were detained by members of the Police Bureau and Oregon State Police on Southwest 4th Avenue between SW Morrison and Alder Streets. Police said they detained the group to investigate disorderly conduct. The detained people, including several journalists, were not allowed to leave until they and their identification were individually photographed by police.
A squad of state troopers moved in front of the marchers at SW Alder Street and prevented them from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street. The Incident Commander ordered the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people.

The Police Bureau used a sound truck to deliver warnings to the group, including two announced announcements that the group was detained for the investigation of disorderly conduct and that police would be making arrests based upon probable cause. Subsequent messages from the sound truck specified that detainees were being identified and they should show their identification IDs to be processed. Those without identification were required to provide contact information prior to their release. Detainees were warned that once they were released, they should leave the area or face arrest. There is no record of a dispersal order or a warning being given at Southwest 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams shows that the Police Bureau photographed 389 people.
Among the detained were several journalists were detained along with protesters, representing including those employed by the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them. The group, but none were charged with a crime, was apprehended by officers and identified. They were later released without being criminally charged.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza, where police broke up scuffles among various groups of protesters, as people left the area.

**IPR received complaints members objected to treatment by police concerns after June 4**

After the June 4 protest, the ACLU of Oregon accused the Police Bureau of about police bias against protesters, broad declarations of unlawful assembly, disproportionate use of force, and the use of mass arrests and detention as crowd control. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media members, and bystanders who were detained.

Individuals filed complaints also contacted IPR to objecting concerns to their interactions with the police and shared observations about the police. Twenty-seven community members contacted IPR with reports of being profiled and detained and mass detention and profiling, hit with police use of non-lethal munitions. Some alleged the police favored the alt-right protesters over those representing the left, and bias shown by the police against leftist protesters. Rose City Antifa objected on its website to the police response at the June 4 event, particularly about the mass detention that led to protesters being individually searched and...
photographed with their identification.

**Community members saw favoritism on June 4**

Community members saw an imbalance in communication and property seizure

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. **Patriot Prayer representatives assured** the sergeant that their participants in the Patriot Prayer Rally would not bring firearms.

The Special Events sergeant also attempted to contact representatives of persons associated with Rose City Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

During the event, the Special Events sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages with the sergeant. When the sergeant texted counter-protest organizers in Chapman Square **to call attention to** individuals within the square people were throwing bricks and water bottles at police, the organizers denied it.

Several community members perceived disparities in how the Police Bureau treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. **In response to a question about perceived bias against left-wing protesters**, a lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently because Rose City Antifa lacked a hierarchical structure with a clear leader, which "made it difficult for [the Police Bureau] to find a single point of contact to convey information."

**Despite that challenge**, attempting to contact all participants prior to the event **was** a prudent measure. Police Bureau personnel indicated the Special Events Sergeant was unable to fully communicate with Rose City Antifa prior to June 4. However, **the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement**.

During this review, some community members said that they were unaware of the Police
The Police Bureau maintains a robust social media presence and sends out regular press releases, but having a full, transparent communication plan for specific events would add more clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and city code authority as well as descriptions of methods and strategies to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor for real-time information, like real-time sound truck warnings, concerns about crowd behavior, and actions taken by officers. These communication strategies should not require event attendees to interact with an officer to get information.

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police take from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This variation could be attributed to differences in policies about the confiscation of property between federal and local jurisdictions. Police reports show that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Federal Protective Police checked bags and individuals at they entered. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service.

Portland Police worked outside Schrunk Plaza, so officers mostly seized property from counter-protestors in and around Chapman Square.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows police to preemptively take custody of property that may be used in the commission of a crime.
The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After-action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were photographed and displayed on the Police Bureau’s Twitter feed.

Additionally, there were a number of weapons left behind by some individuals detained at Southwest 4th and Morrison. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, we recommend the Bureau add them to the Directive 635.10 (Crowd Management/Crowd Control).

Intergovernmental agreements need to be updated

Although intergovernmental agreements between the Police Bureau and other agencies may become reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements among agencies. Such language will become more important as the Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

The intergovernmental agreements are also do not silent as to mandating that other cooperating outside agencies make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees. We recommend that the City modify existing agreements and require outside agencies cooperate with the City’s administrative investigation process.

Police use of mass detention during large events

Kettling/boxing-in is a controversial tactic
In the days following the June 4 protest, community members contacted IPR to report that the Police Bureau had “kettled” protesters at Southwest W 4th Avenue and Morrison Street. Kettle is the most common term used by protesters to describe the crowd-control tactic when officers surround a group of protesters, and control access in and out of the area. Activist groups and media generally call this tactic a kettle, while the Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

The Police Bureau’s first documented use of the tactic involving a large group of people occurred on November 29, 2014, following the decision of a St. Louis County, Missouri, grand jury did not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50 to-100 demonstrators were holding a “die-in” in front of Portland’s Justice Center at Southwest W 2nd and Main Street. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment area, for about one hour. Ten people were arrested, but the District Attorney declined to file charges as ultimately there were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

During the June 4 protect, officers used mass detention, unlike the November 2014 incident. did not have officers surrounding protesters on all sides. buildings on either side of the street Downtown Portland’s built environment to help aid the officers in containing the marchers. Those detained at Southwest W 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The kettle/box-in is controversial among activists for several reasons. One is that they can the possible detention of bystanders not involved in any disruptive or illegal activity. A legal observer present at Chapman Square and the ACLU legal director said it was unlikely that “99 percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the group. There is also disagreement between those who believe the use of a kettle de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

Law enforcement officials that IPR spoke to said the box-in can be effective but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out — if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes
difficult.” The Vancouver (B.C.) Police Department said it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

**Reasonable suspicion of disorderly conduct had by officers prior to mass detention not documented**

Courts allow police to temporarily detain an individual if there is reasonable suspicion that the person was involved in a crime.

Some community members said they were not told why they were detained on June 4. IPR found little documentation by the Police Bureau describing evidence of what led that supported officers’ to have reasonable suspicion of an individual’s disorderly conduct. Police reports indicate that those detained were not questioned about disorderly conduct prior to their release. Some community members said they were not told why they were detained on June 4.

Courts allow police to temporarily detain individuals if there is reasonable suspicion that the detained person was involved in a crime.

Police records show that although those detained at SW 4th and Morrison were held for further investigation of violation of disorderly conduct, which is a misdemeanor, police reports and Police Bureau video provide little documentation. Available Police Bureau video of crowd behavior that would articulate the officers’ reasonable suspicion of a crime prior to the detention of the marchers did not appear to support allegations of disorderly conduct. Officers interviewed no witnesses were interviewed by officers regarding the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of the individuals detained and the forms of identification they provided, but not evidence of statements indicating that any detained marchers were questioned about whether they had engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify individuals who were detained, not question them.

**Media or legal observers should not be detained without first being given an opportunity to comply with police requests**

Several journalists were among those detained. They were processed in a similar manner to the protesters and were required to be photographed and show identification prior to release. Police Bureau Directive 635.10 (Crowd Control) addresses the arrest of media and legal observers, but does not cover detention:

> Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not
interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4 were of broad community and even national interest, given the large number of confrontations between members of nationalist groups and antifascists. The detention of so many members of the media could be perceived as the City attempting suppress media coverage of the protest.

The Police Bureau needs a policy for mass detention and arrests

Any inquiry into the action of Police Bureau members should begin with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau had no lack of a written policy governing any kind of stop, or temporary detention, or. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau create a stop policy to govern the actions of its members when they engage in stops and other forms of temporary detention during their regular duties. The Police Bureau should also amend its crowd control directive to prohibit the use of mass detention or arrest absent a compelling government interest.

The lack of a Police Bureau policy specifically regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy. It would provide the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws.
In addition, the lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity to craft a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public to better understand police goals and for the Police Bureau to understand community preferences about strategies to achieve them. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive against bystanders. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to:

• provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
• describe the types of warnings that need to be provided to demonstrators;
• include a general prohibition on the detention of media and legal observers;
• consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
• articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, it should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

Police documentation of mass events also needs improvement

The Police Bureau often documents mass events through video recording to record officers’ actions and to aid in criminal prosecutions. It has improved and expanded its efforts at videotaping its crowd control activities in recent years, but there remain gaps in video collected because of the limited number and vantage points provided by Police Bureau videographers. Video is often taken by criminalists from the Forensic Evidence Division from behind police lines. During larger, quickly moving events, Police Bureau videographers may not be in a proper position to record events of value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

In the June 4 event after-action review, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video-recorded activities. IPR echoes that suggestion and recommends that, in addition to video from individual Rapid Response Team members, there should be video that captures interactions between officers and demonstrators from a distance that reflects larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time, date, or the person who recorded it. This information is important to ensure accuracy and help understand complex...
situations. We recommend that Police Bureau video of crowd control events include date and time stamps, as well as the videographer on the video. All video taken at crowd control events by Police Bureau personnel should also have clear guidelines on access and use of the collected video, as well as having a retention period.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

Community members feared police were intelligence-gathering

Police Bureau should not photograph individuals during a mass detention without a clear policy

On June 4, the Police Bureau identified and photographed 389 people without a clear policy on how those photos will be used, shared and retained. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau, has no ability to respond to address community concerns that the tactic will not be used as an attempt to chill free speech and dissenting voices. It appears the tactic has not been used prior to June 4.

Rapid Response Team officers did not release those detained at Southwest 4th and Morrison until they were photographed holding next to their identification. Officers directed individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR defended the action, saying it was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the protesters and their identification quickly became controversial in the community.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of individuals on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not the Bureau’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

Many community members contacted IPR fearing the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau. The Police Bureau said photographing people and their identification was...
part of its investigation into disorderly conduct and other crimes that occurred on June 4.

The ACLU legal director felt that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.

Police oversight agencies in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. The Seattle Police Department said it does photograph protesters as part of the arrest process but added that they have an ordinance that prevents them from photographing crowds until crimes are committed.

Neither community members or Police Bureau staff that IPR contacted during this review were aware of prior instances of Police Bureau members photographing all individuals during a mass detention. There is currently no directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial confusion on the topic when speaking to OPB. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau said they would be retained indefinitely by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are now subject to a legal hold in response to a lawsuit, which prohibits their destruction. The Police Bureau currently does not have a retention policy for data entered into DIMS, allowing for photos to be held permanently until staff are told to delete them.

Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

Community members reported fearing the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether the photographing of people and their identification constituted a form of intelligence gathering by the Police Bureau.

The ACLU contends photographing the identification with detained individuals was a violation of a protester’s Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on people’s political affiliation.

Police oversight agencies in Washington, D.C. and Berkeley, Calif., were not familiar with this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but an ordinance prevents officers from photographing crowds unless crimes are committed.
It is important that a written policy reflect community values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices.
Recommendations

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   - create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   - have a transparent and coherent communication strategy for it to better communicate with the public prior to and during large crowd control events;
   - update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

3. To address issues with mass detentions and arrests the Police Bureau should:
   - not use mass detentions or arrests absent a compelling governmental interest;
   - amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   - determine in the after-action review whether any mass detentions or arrests was appropriately ordered and implemented.

4. To better document crowd control events, Police Bureau personnel should:
   - time and date stamp all video footage with videographer’s name;
   - attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   - preserve and archive audio transmissions between officers during crowd control events; and
   - create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

5. The Police Bureau should not photograph individuals detained but not changed with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will be authorized to access the photos;
   - whether they will be shared with other law enforcement agencies; and
   - a deadline after which the photographs must be purged if there are no criminal charges.
Methodology

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned. During a policy review, the assigned staff will review relevant Police Bureau policy, talk to community members and Bureau staff, and review collected documents. It is IPR’s practice to conclude a policy review with a public report that allows community members access to the review team’s work and recommendations.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We also interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Several members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver (B.C.) Police Department.
Event Timeline

12:32 PM
The Police Bureau sound truck announced:

This is the Portland Police Bureau. Streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

The warning was provided seven times between 12:32 pm and 12:53 pm.

1:00 PM
Officers located on SW Madison said individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch objects at officers and documented multiple officers being struck, in some cases sustaining injuries. Police reports said numerous protesters in Chapman Square wore masks or gas masks and carried improvised shields.

1:02 PM – 2:44 PM
The sound truck broadcast 10 warnings to both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that participants would face arrest and the “park [Chapman] may be closed.”

1:45 PM
The police estimated by this time there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources show few issues at the counter-protests held at City Hall and in front of the Green-Wyatt Building.
3:15 PM

The sound truck announced that the south side of Chapman Square was closed because of “criminal activity,” requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.

The sound truck made the following announcement:

*This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.*

3:30 PM

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less-lethal rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

3:30 PM-4:14 PM

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Protesters were advised to leave to the north. Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance when they reached the north side of Chapman Square.

A group of roughly 200-300 protesters remained in SW Main Street and Lownsdale Square and was declared an unlawful assembly.

3:51 PM

Protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.
Nearly 400 counter-protestors, media members and legal observers were detained by members of the Portland Police Bureau and Oregon State Police on SW 4th between SW Morrison and Alder. A squad of state troopers moved in front of the marchers at SW Alder Street and prevented the march from continuing north on SW 4th Avenue, while a Police Bureau Rapid Response Team squad blocked SW Morrison Street. The Incident Commander ordered the detention to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center.

The sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

The sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

Portland police finished processing those detained.
Policy Review:
Portland Police Bureau can improve its approach to crowd control during street protests

Mary Hull Caballero
City Auditor

Constantin Severe
Director, Independent Police Review

Office of the City Auditor
Portland, Oregon
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Summary

Since the 2016 Presidential election, there has been an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted attention from counter-protestors and law enforcement.

In the weeks leading up to the rally, Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national media organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members objected to what they described as the Police Bureau’s unequal treatment of the various groups of protesters and the lack of legal justification for detaining people on June 4. During its investigation into the protesters’ allegations, the Independent Police Review (IPR) found insufficient documentation by the Police Bureau to support the legal justification had by the officers for the mass detention.

The Police Bureau also photographed individuals during the mass detention without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address fear among some in the community that the tactic will be used to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides the opportunity for dialogue between community members and the Police Bureau about appropriate police tactics and behavior at protests that could lead to arrests.
Events Leading Up to and Including June 4 Protest

Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day were marked by multiple confrontations between police and protesters. Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood in East Portland. Counter-protestors confronted the Patriot Prayer group, including members of Rose City Antifa, an anti-fascist group, as it marched down Southeast 82nd Avenue. Police arrested three counter-protestors during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train. The men intervened when they attempted to intervene with a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence as had happened in other cities. The Police Bureau decided it would deploy its Rapid Response Team and issued a press release noting the potential for violence:

There will be a robust law enforcement presence due to online threats of violence
between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

Rapid Response Team focuses on large events

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly sent to large events, including protests. Officers volunteer for the team, are screened, and receive additional training in crowd control tactics while maintaining a regular duty assignment.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets. In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to help during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

The Police Bureau also uses Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. These officers assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were present at the June 4 rally. Two squads of the Oregon State Police and a squad from the Multnomah County Sheriff’s Office were part of the police presence.
Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those protesting the Patriot Prayer Rally. The largest group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Officers seized property and eventually cleared Chapman Square

Tension among groups in Chapman Square and Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Schrunk Plaza to separate the opposing demonstrators. Two squads from the Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south toward Schrunk Plaza.
During the rally, individuals in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. Some people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects and to move to the north out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.

**Police detained nearly 400 people at Southwest 4th and Morrison**

At 4:21 pm, Police Bureau officers and Oregon State Police detained counter-protesters who had moved north from Chapman Square to Southwest 4th Avenue between Morrison and Alder Streets. The group, including several journalists, were not allowed to leave until police photographed them holding their identification.

A squad of state troopers moved in front of the marchers.

*Police seized items from protesters. Lyndsey Hewitt – Courtesy of Portland Tribune*
at Southwest Alder Street and prevented them from continuing north on 4th Avenue, while a Police Bureau Rapid Response Team squad blocked Southwest Morrison Street. The Incident Commander ordered that the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR’s review of police reports filed by Field Arrest Teams showed the Police Bureau photographed 389 people.

The Police Bureau used a sound truck to deliver warnings to the group, including two announcements that members would be detained for the investigation of disorderly conduct and that police would be making arrests based on probable cause. Subsequent messages from the sound truck specified that those detained should show their identification. Those without identification were required to provide contact information. Police Officers warned that once people were released, they should leave or face arrest. There is no record of a dispersal order or a warning being given at Southwest 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.”

Several journalists were detained along with protestors, representing the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed similar to the protesters, required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of the intersection of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them, but none were charged with a crime.

During the mass detention, Federal Protective Services officers closed Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza, where police broke up scuffles among various groups.
Community members objected to treatment by police

Twenty-seven community members filed complaints with IPR related to the June 4 protest. Their objections fell into three broad areas:

1. Perceptions that police favored one group over another;
2. Use of a detention tactic that swept up innocent bystanders; and,
3. Forcing people who were detained to be photographed holding their identification without evidence they had engaged in criminal activity.

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. Patriot Prayer representatives assured the sergeant their participants would not bring firearms.

The sergeant also attempted to contact representatives of Rose City Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and express their concerns verbally, not physically.

During the event, the sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages. When the sergeant texted counter-protest organizers in Chapman Square to call attention to people throwing bricks and water bottles at police, the organizers denied it.
Several community members perceived disparities in how the Police Bureau treated the different groups, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. A lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently because Rose City Antifa lacked a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney said things she observed police take “poles from signs” from the protesters in Chapman Square, whereas while the protesters at the rally in Schrunk Plaza could have had “giant flag poles.”

This variation could be attributed to differences in federal and Portland’s local policies about the confiscation regarding the seizure of property between federal and local jurisdictions. Police reports show that the Police Bureau confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Federal Protective Police checked bags and individuals as they entered Schrunk Plaza. Portland Police worked outside Schrunk Plaza, so officers mostly seized property from counter-protestors in and around Chapman Square.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Bureau Directive 660.10 (Property and Evidence Procedure) also allows police to preemptively take custody of property that may be used in the commission of a crime.

After-action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were photographed and displayed on the Police Bureau’s Twitter feed.
Additionally, there were weapons left by some individuals detained at Southwest 4th and Morrison.

Community members objected to mass detention

In the days following the June 4 protest, community members reported that the Police Bureau had “kettled” protesters at Southwest 4th Avenue and Morrison Street. Kettle is a term used by protestors to describe the crowd-control tactic when officers surround a group and control access in and out of the area. The Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

During the June 4 protest, officers used buildings on either side of the street to help contain the marchers. Those detained at Southwest 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The kettle/box-in is controversial disliked by some among community members activists for several reasons. One concern is that they can sweep in bystanders not involved in any disruptive or illegal activity may be unfairly detained. An additional worry is that having a large number of officers surrounding and detaining protestors may have a chilling effect on free speech, especially in a city block in the middle of the day while businesses were open. There is also disagreement between those who believe the use of a kettle de-escalates a potentially violent situation and those who believe it does the opposite.

Law enforcement officials said the box-in can be effective but point to the box-in as an effective tactic but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “(i)f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Police Bureau command staff said that the use of the box-in deescalates potentially violent situations without police use of force. The Vancouver, British Columbia, Police Department said it does not use this type of containment because of the number of officers required and human rights considerations.

Reasonable suspicion of disorderly conduct not documented

Courts allow police to temporarily detain an individual if there is reasonable suspicion that the person was involved in a crime.
IPR found little documentation by the Police Bureau describing evidence that supported officers’ reasonable suspicion of an individual’s disorderly conduct prior to the mass detention. Police reports indicated that those detained were not questioned about disorderly conduct prior to their release. Some community members said they were not told why they were detained.

Police records show those detained were held for further investigation of disorderly conduct, which is a misdemeanor. Available Police Bureau video of crowd behavior prior to the detention of the marchers did not appear to support allegations of disorderly conduct. Officers interviewed no witnesses about the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing that marchers obstructed vehicles or pedestrians or any of the other elements required by the disorderly conduct statute.

Police reports documented the individuals detained and the forms of identification they provided, but no statements indicating they engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify and process individuals who were detained, not question them.

**Community members feared police would misuse personal information collected at the protest**

On June 4, the Police Bureau individually photographed 389 people and their identification before allowing them to leave the mass detention area. Officers directed individuals wearing masks or disguises to protect their identity to remove them prior to being released.

In complaints filed with IPR, community members feared the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether photographing people and their identification constituted a form of intelligence gathering by the Police Bureau.

The ACLU contends photographing the individuals with their identification during a protest was a violation of their Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on a person’s political affiliation.

Police accountability agencies in Washington, D.C. and Berkeley, Calif., said their departments do not use this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but a local ordinance prevents officers from photographing people unless crimes have been committed.

The Police Bureau has no policy to guide if photographs should be taken at large events and how they subsequently may be used, shared, or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau has no ability to address community concerns that the
photographs and identification will not be misused to chill free speech and dissenting voices.

Police Bureau command staff defended the tactic, saying it was part of an investigation into the attempted assault on officers with bricks and other objects.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware that photos were taken of people and their identification on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not the Bureau’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

In a June 21 memo to Mayor Wheeler, Chief Marshman wrote that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR learned the Police Bureau still had the photos of the individuals and their identification in its possession. The Police Bureau does not have a retention policy for digital image data, allowing for photos to be held permanently until staff are told to delete them. The Police Bureau said the photographs would be retained indefinitely unless they were explicitly ordered to be removed. Now they are subject to a legal hold in response to a lawsuit, which prohibits their destruction.

Policy Conclusions

Better communication during planning would help public understand expectations during large events

The Police Bureau prudently attempted to contact participants prior to the protests. Policierally, Bureau personnel indicated the Special Events sergeant was unable to fully communicate with Rose City Antifa prior to June 4, because it did not have specific leaders or organizers as lacked the leadership and organizational structure of the other groups had. While this presented a challenge, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement.
Some community members said that they were unaware of the Police Bureau’s authority or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases but should have a comprehensive, transparent communication plan for specific events to add clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and City Code authority, as well as descriptions of methods used to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor in real-time. These communication strategies should not require participants to interact with an officer to get information.

**Police Bureau needs policies to govern mass detentions and arrests**

Any inquiry into the action of Police Bureau members normally begins with a review of the applicable policy. Currently, the Police Bureau has no written policy governing stops or other forms of temporary detention, including mass detentions. The Police Bureau also lacks a mass arrest policy.

The absence of a policy that addresses mass detentions and arrests presents risk for the City. A well-reasoned policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on the policy. It would provide the opportunity to craft a document that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could be weighed against the governmental interests the Police Bureau seeks to advance when it uses mass detention or arrest during protests.

A mass detention and arrest policy should:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators prior to detention;
- include a general prohibition on the detention of media and legal observers;
- consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

**Better recorded evidence would benefit post-event investigations and reviews**

The Police Bureau often documents mass events through videos to record officers’ actions and aid in criminal prosecutions. It has improved and expanded its video-taping capacity during crowd control activities in recent years, but gaps remain because of the limited number of cameras and vantage points provided by Police Bureau videographers.

Video is often taken by Forensic Evidence Division criminalists from behind police lines. During larger, quickly moving events, videographers may not be well-positioned to record events of
value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document incidents during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

**Intergovernmental agreements need to be updated**

Although intergovernmental agreements between the Police Bureau and other agencies may be reviewed annually, they date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in large events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive but is not included in the agreements among agencies. Such language will become more important as the Police Bureau’s directives, particularly those governing use-of-force, are updated to be more restrictive than those used by partner agencies.

The agreements also do not require other agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.
Recommendations

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   • create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   • have a transparent and comprehensive strategy to better communicate with the public prior to and during large crowd control events;
   • update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s use-of-force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

2. To address issues with mass detentions and arrests the Police Bureau should:
   • create a written policy that governs all stops and other forms of temporary detention;
   • not use mass detentions or arrests absent a compelling governmental interest;
   • amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   • determine in the after-action review whether any mass detentions or arrests was appropriately ordered and implemented.

3. To better document crowd control events, Police Bureau personnel should:
   • make use of Go-Pro cameras on individual officers and position other cameras from a distance to capture group dynamics;
   • time and date stamp all video footage with videographer’s name;
   • attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   • preserve and archive audio transmissions between officers during crowd control events; and
   • create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

4. The Police Bureau should not photograph individuals who have been detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
• who within the Police Bureau will be authorized to access the photos;
• whether they will be shared with other law enforcement agencies; and
• a deadline after which the photographs must be purged if there are no criminal charges.
Methodology

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Some members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver, British Columbia, Police Department.
Policy Review:
Portland Police Bureau can improve its approach to crowd control during street protests

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Summary

Since Following the 2016 Presidential election, there has been Portland saw an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted attention from counter-protestors and law enforcement.

In the weeks leading up to the incident rally, Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national media organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members objected to what they described as different treatment the Police Bureau’s unequal treatment of the various groups of protesters and the lack of legal justification for detaining people-individuals on June 4. During its investigation into the protesters’ allegations, the Independent Police Review (IPR) found insufficient documentation by the Police Bureau to of the legal justification had by the officers for the mass detention.

The Police Bureau also photographed individuals during the mass detention without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address fear among some in the community that the tactic will be used to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides the opportunity for dialogue between community members and the Police Bureau about appropriate police tactics and behavior at protests that could lead to arrests.
Events Leading Up to and Including June 4 Protest

Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau's response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President's Day and May Day were marked by multiple confrontations between police and protesters. Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood in East Portland. Counter-protestors confronted the Patriot Prayer group, including members of Rose City Antifa, an anti-fascist group, as it marched down Southeast 82nd Avenue. Police arrested three counter-protestors during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train. The men intervened when they attempted to intervene with a man yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence as had happened in other cities. The Police Bureau decided it would deploy its Rapid Response Team and issued a press release noting the potential for violence:

There will be a robust law enforcement presence due to online threats of violence
between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

Rapid Response Team focuses on large events

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly sent to large events, including protests. Officers volunteer for the team, are screened, and receive additional training in crowd control tactics while maintaining a regular duty assignment. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets. In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to help during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

The Police Bureau also uses Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. These officers assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were present at the June 4 rally. Two squads of the Oregon State Police and a squad from the Multnomah County Sheriff’s Office were part of the police presence.
Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those protesting the Patriot Prayer Rally. The largest group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Officers seized property and eventually cleared Chapman Square

Tension among groups in Chapman Square and Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Schrunk Plaza to separate the opposing demonstrators. Two squads from the Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south toward Schrunk Plaza.
During the rally, individuals in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. Some people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects and to move to the north out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.

**Police detained nearly 400 people at Southwest 4th and Morrison**

At 4:21 pm, Police Bureau officers and Oregon State Police detained counter-protesters who had moved north from Chapman Square to Southwest 4th Avenue between Morrison and Alder Streets. The group, including several journalists, were not allowed to leave until police photographed them holding their identification.

A squad of state troopers moved in front of the marchers.
at Southwest Alder Street and prevented them from continuing north on 4th Avenue, while a Police Bureau Rapid Response Team squad blocked Southwest Morrison Street. The Incident Commander ordered that the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR’s review of police reports filed by Field Arrest Teams showed the Police Bureau photographed 389 people.

The Police Bureau used a sound truck to deliver warnings to the group, including two announcements that members would be detained for the investigation of disorderly conduct and that police would be making arrests based on probable cause. Subsequent messages from the sound truck specified that those detained should show their identification. Those without identification were required to provide contact information. Police Officers warned that once people were released, they should leave or face arrest. There is no record of a dispersal order or a warning being given at Southwest 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.”

Several journalists were detained along with protestors, representing the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed similar to the protesters, required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of the intersection of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them, but none were charged with a crime.

During the mass detention, Federal Protective Services officers closed Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza, where police broke up scuffles among various groups.
Community members objected to treatment by police

Twenty-seven community members filed complaints with IPR related to the June 4 protest. Their objections fell into three broad areas:

1. Perceptions that police favored one group over another;
2. Use of a detention tactic that swept up innocent bystanders; and,
3. Forcing people who were detained to be photographed holding their identification without evidence they had engaged in criminal activity.

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. Patriot Prayer representatives assured the sergeant their participants would not bring firearms.

The sergeant also attempted to contact representatives of Rose City Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and express their concerns verbally, not physically.

During the event, the sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages. When the sergeant texted counter-protest organizers in Chapman Square to call attention to people throwing bricks and water bottles at police, the organizers denied it.
Several community members perceived disparities in how the Police Bureau treated the different groups, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. A lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently because Rose City Antifa lacked a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney said things she observed police take “poles from signs” from the protesters in Chapman Square, whereas while the protesters at the rally in Schrunk Plaza could have had “giant flag poles.”

This variation could be attributed to differences in federal and Portland’s local policies about the confiscation regarding the seizure of property between federal and local jurisdictions. Police reports show that the Police Bureau confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Federal Protective Police checked bags and individuals as they entered Schrunk Plaza. Portland Police worked outside Schrunk Plaza, so officers mostly seized property from counter-protestors in and around Chapman Square.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possesses unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Bureau Directive 660.10 (Property and Evidence Procedure) also allows police to preemptively take custody of property that may be used in the commission of a crime.

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Additionally, there were weapons left by some individuals detained at Southwest 4th and Morrison.

**Community members objected to mass detention**

In the days following the June 4 protest, community members reported that the Police Bureau had “kettled” protesters at Southwest 4th Avenue and Morrison Street. Kettle is a term used by protestors to describe the crowd-control tactic when officers surround a group and control access in and out of the area. The Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

During the June 4 protest, officers used buildings on either side of the street to help contain the marchers. Those detained at Southwest 4th and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The kettle/box-in is controversial disliked by some among community members activists for several reasons. One concern is that they can sweep in bystanders not involved in any disruptive or illegal activity may be unfairly detained. An additional worry is that having a large number of officers surrounding and detaining protestors may have a chilling effect on free speech, especially in a city block in the middle of the day while businesses were open. There is also disagreement between those who believe the use of a kettle de-escalates a potentially violent situation and those who believe it does the opposite.

Law enforcement officials noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “(i)f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Police Bureau command staff said that the use of the box-in deescalates potentially violent situations without police use of force. The Vancouver, British Columbia, Police Department said it does not use this type of containment because of the number of officers required and human rights considerations.

**Reasonable suspicion of disorderly conduct not documented**

Courts allow police to temporarily detain or stop an individual if there is reasonable suspicion that the person was involved in a crime.
IPR found little documentation by the Police Bureau describing evidence that supported officers’ reasonable suspicion of an individual’s disorderly conduct prior to the mass detention. Police reports indicated that those detained were not questioned about disorderly conduct prior to their release. Some community members said they were not told why they were detained.

Police records show those detained were held for further investigation of disorderly conduct, which is a misdemeanor. Available Police Bureau video of crowd behavior prior to the detention of the marchers did not appear to support allegations of disorderly conduct. Officers interviewed no witnesses about the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing that marchers obstructed vehicles or pedestrians or any of the other elements required by the disorderly conduct statute.

Police reports documented the individuals detained and the forms of identification they provided, but not evidence of statements indicating they engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify and process individuals who were detained, not question them.

Community members feared police would misuse personal information collected at the protest

On June 4, the Police Bureau individually photographed 389 people and their identification before allowing them to leave the mass detention area. Officers directed individuals wearing masks or disguises to protect their identity to remove them prior to being released.

In complaints filed with IPR, community members feared the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether photographing people and their identification constituted a form of intelligence gathering by the Police Bureau.

The ACLU contends photographing the individuals with their identification during a protest was a violation of their Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on a person’s political affiliation.

Police accountability agencies in Washington, D.C. and Berkeley, Calif., said their departments do not use this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but a local ordinance prevents officers from photographing people unless crimes have been committed.

The Police Bureau has no policy to guide if photographs should be taken at large events and how they subsequently may be used, shared, or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau has no ability to address community concerns that the
photographs and identification will not be misused to chill free speech and dissenting voices.

Police Bureau command staff defended the tactic, saying it was part of an investigation into the attempted assault on officers with bricks and other objects.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware that photos were taken of people and their identification on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not the Bureau’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

In a June 21 memo to Mayor Wheeler, Chief Marshman wrote that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR learned the Police Bureau still had the photos of the individuals and their identification in its possession. The Police Bureau does not have a retention policy for digital image data, allowing for photos to be held permanently until staff are told to delete them. The Police Bureau said the photographs would be retained indefinitely unless they were explicitly ordered to be removed. Now they are subject to a legal hold in response to a lawsuit, which prohibits their destruction.

Policy Conclusions

**Better communication during planning would help public understand expectations during large events**

The Police Bureau prudently attempted to contact participants prior to the protests. Policerally, Bureau personnel indicated the Special Events sergeant was unable to fully communicate with Rose City Antifa prior to June 4, because it did not have specific leaders or organizers as did the leadership and organizational structure of the other groups. While this presented a challenge, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement.
Some community members said that they were unaware of the Police Bureau’s authority or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases but should have a comprehensive, transparent communication plan for specific events to add clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and City Code authority, as well as descriptions of methods used to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor in real-time. These communication strategies should not require participants to interact with an officer to get information.

**Police Bureau needs policies to govern mass detentions and arrests**

Any inquiry into the action of Police Bureau members normally begins with a review of the applicable policy. Currently, the Police Bureau has no written policy governing stops or other forms of temporary detention, including mass detentions. The Police Bureau also does not have a mass arrest policy.

The absence of a policy that addresses mass detentions and arrests presents risk for the City. A well-reasoned policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on the policy. It would provide the opportunity to craft a document that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could be weighed against the governmental interests the Police Bureau seeks to advance when it uses mass detention or arrest during protests.

A mass detention and arrest policy should:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators prior to detention;
- include a general prohibition on the detention of media and legal observers;
- consider the length of detention and if weather and other conditions are suitable for

*Police detained hundreds of people who were not allowed to leave until they and their identification were photographed.*
holding a large group outside; and
• articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

**Better recorded evidence would benefit post-event investigations and reviews**

The Police Bureau often documents mass events through videos to record officers’ actions and aid in criminal prosecutions. It has improved and expanded its video-taping capacity during crowd control activities in recent years, but gaps remain because of the limited number of cameras and vantage points provided by Police Bureau videographers.

Video is often taken by Forensic Evidence Division criminalists from behind police lines. During larger, quickly moving events, videographers may not be well-positioned to record events of value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document incidents during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

**Intergovernmental agreements need to be updated**

Although intergovernmental agreements between the Police Bureau and other agencies may be reviewed annually, they date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in large events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive but is not included in the agreements among agencies. Such language will become more important as the Police Bureau’s directives, particularly those governing use-of-force, are updated to be more restrictive than those used by partner agencies.

The agreements also do not require other agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.
Recommendations

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   - create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   - have a transparent and comprehensive strategy to better communicate with the public prior to and during large crowd control events;
   - update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s use-of-force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct all stops and other forms of temporary detention.

   - create a written policy that governs all stops and other forms of temporary detention;
   - not use mass detentions or arrests absent a compelling governmental interest;
   - amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   - determine in the after-action review whether any mass detentions or arrests was appropriately ordered and implemented.

3. To better document crowd control events, Police Bureau personnel should:
   - make use of Go-Pro cameras on individual officers and position other cameras from a distance to capture group dynamics;
   - time and date stamp all video footage with videographer’s name;
   - attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   - preserve and archive audio transmissions between officers during crowd control events; and
   - create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

4. The Police Bureau should not photograph individuals who have been detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
• who within the Police Bureau will be authorized to access the photos;
• whether they will be shared with other law enforcement agencies; and
• a deadline after which the photographs must be purged if there are no criminal charges.
Methodology

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Some members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver, British Columbia, Police Department.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2016 Rally & Protest

DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
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Executive Summary

Summarize major points and recommendations when we’re done

Protests have become common in Portland

Since the early 1990s, Portland has been known as a center of protest, activism, and encounters between crowds and police. More recently, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have generated concern in the community. In September 2014, the Citizen Review Committee’s Crowd Control workgroup issued a report outlining concerns about the Bureau’s crowd control techniques. They recommended changes in twelve different areas including use of sound trucks, expansion of training, displaying name badges, establishing stronger community relations, releasing seized property, and more transparent processes around event permitting, police operating procedures, and expectations prior to events. Waiting on PPB Response

In 2015, the IPR Director also submitted a memo to the Police Chief outlining concerns that complainants expressed related to the Portland Police’s response to Michael Brown/Black Lives Matter protests in the previous year. Complainants indicated concerns regarding aggressive police tactics precipitating use of force, contradictory police commands to protestors, motorcycle and bicycle officers striking individuals with their vehicles, officers using batons, and officers aiming less-lethal weapons at protest participants.

The Presidential election in November 2016 instigated a series of protests in Portland that gained national attention. Large events on Inauguration Day, President’s Day and May Day also gained significant attention leading into the summer.

Early 2017 also saw the rise in confrontations between right-wing or alt-right activists and counter-protesters. The right-wing activist group Patriot Prayer scheduled a number of protests throughout the Portland, Seattle and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose these three cities to "liberate the conservatives on the West Coast."

In late April, Patriot Prayer held a "March for Free Speech" rally in the Montavilla neighborhood of Portland. The event was scheduled to take place at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three left-wing protesters were arrested throughout the march.

Portland Police ultimately provided TriMet buses for the right-wing protesters to leave the event, an act which was perceived by many community members as favoritism. Jeremy Christian, the man who later committed a racially-motivated double homicide and attempted murder on a TriMet MAX train in May, was seen at this protest giving Nazi salutes and referring to protesters by racial slurs prior to being escorted away by Portland Police officers.

After the murders on the MAX train, many called on Patriot Prayer to cancel a "Free Speech Rally" set for June 4th at Terry Schrunk Plaza in Downtown Portland. Community members saw the event as Islamophobic and also cited Mr. Christian’s association with Patriot Prayer and the fact that the victims were murdered and wounded while defending two Muslim teenagers. As Terry Schrunk
Plaza is a small park on Federal property, Mayor Ted Wheeler filed a request with the federal government to revoke the permits for the rally, which was denied. Patriot Prayer indicated they would not cancel their protest. A number of organizations, including union groups, interfaith groups, and Rose City Antifa, scheduled counter-protests in the same vicinity as the Patriot Prayer rally on June 4th.

**Portland Police maintains a Rapid Response Team**

The Portland Police Bureau formed the Rapid Response Team in 2001, as an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, maintain a regular assignment while on the team and undergo an evaluation process before they join the team.

While often described as the Police Bureau’s “riot cops,” command staff describe them as the Police Bureau unit responsible for responding to “mass events.” The Rapid Response Team responds to other large gatherings, such as holiday festivals and recently took part in search and rescue operations during wildfires in the Columbia River gorge. They would also be expected to respond to an earthquake or other natural disaster.

The Rapid Response Team is divided into squads, each commanded by a Sergeant. In addition to its own squads, the Police Bureau maintains interagency agreements with other law enforcement agencies, including the Oregon State Police, Multnomah County Sheriff’s Office, Clackamas County Sheriff’s Office, Clark County Sheriff’s Office, and several local municipal police departments in Oregon and Washington. Officers from these other agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response squads and squads from other agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters. RRT squads wear armor, use force, and expend less lethal munitions during these trainings, ostensibly using the same decision-making process used during responses to actual protests and other incidents.

**PHOTO OF RRT MEMBERS**

Rapid Response Team members have a variety of specialized equipment available to them, including batons, protective armor, helmets, smoke canisters, gas canisters, and less lethal weapons including 40mm and .68 caliber launchers. Police and community members often use different terms to describe this equipment. As an example, many community members describe squads in armor, helmets, and gas masks as “riot cops” while officers describe this as personal protective equipment.

In addition to Rapid Response squads, the Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd
control, but not as much or as frequently as Rapid Response Team members. They are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

Rapid Response Team deployed on June 4th

Portland Police said they do a substantial amount of “intelligence work” prior to events. They try to find out which groups may be attending, and gauge the tenor of conversation around the event to decide if attendees may be violent. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event. Portland Police were concerned about the substantial conflict around events involving Patriot Prayer both in Portland and in other cities and decided to heavily staff the June 4th event so they had the resources to ensure public safety. The Rapid Response Team deployed on June 4th consisted of Portland Police, Multnomah County Sheriff’s Office and Oregon State Police officers.

Police Bureau personnel said they do a substantial amount of “intelligence work” prior to events. They try to find out which groups may be attending, and gauge the tenor of conversation around the event to decide if attendees may be violent. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4th protest and counter protests. In the weeks leading up to the incident, this sergeant monitored open source social media platforms, and noted multiple individuals associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. This was concerning, because previous protests in other cities had devolved into physical clashes between opposing groups.

The Special Events Sergeant contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant obtained assurances from multiple people that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4th. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group, and to express their concerns verbally, not physically.

On June 4th, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. People associated with the Patriot Prayer group and some counter-protest groups exchanged many text messages with the sergeant, and coordinated the response of their own security staff based on information provided by the sergeant. The people associated with Antifa exchanged fewer text messages with the sergeant. When the sergeant told them people in Chapman Square were throwing things at the police, they denied it.
Portland Police were concerned about the substantial conflict around events involving Patriot Prayer both in Portland and in other cities and decided to heavily staff the June 4th event so they had the resources to ensure public safety. The Rapid Response Team deployed on June 4th consisted of Portland Police, Multnomah County Sheriff’s Office and Oregon State Police officers.

***Infographic – RRT makeup on June 4th***

**Different Groups Assembled in Parks Downtown**

Terry Schrunk Plaza is a small park located between Portland’s City Hall to the west, and Portland’s federal building to the east. Schrunk Plaza is not a City park, but is instead administered by the federal government. Another park, Chapman Square, sits directly to the north of Schrunk Plaza, across SW Madison Street. The Portland Building sits to Chapman Square’s west across SW 4th Avenue, while the federal courthouse sits to the east, across SW 3rd Avenue. Yet another park, Lownsdale Square, sits to the north of Chapman Square, across SW Main Street. The Multnomah County Circuit Courthouse sits to Lownsdale Square’s west, while the Justice Center sits to the east. These three parks and the streets around them formed the location of most of the events of June 4th.

Rapid Response officers were positioned at Chapman Square and in front of City Hall. Right-wing protesters, including members of Patriot Prayer, assembled in Terry Schrunk Plaza. A group of counter-protesters, including Rose City Antifa, gathered across Madison Street in Chapman Square. Union groups collected in front of City Hall and Interfaith groups congregated near the Justice Center.

***MAP***

Jurisdictional issues complicated this event. Federal Protective Services was stationed at Terry Schrunk Plaza. Community members may have thought Federal officers were part of the Rapid Response Team and receiving direction from Portland Police command staff. Portland Police told us Federal Protective Services was involved in the pre-planning but emphasized that Federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last significant time they worked with Federal Protective Services was in 2013 during Occupy Portland.

**Rundown of events up to the Kettle**

Shortly before noon on June 4th, Rapid Response squads formed skirmish lines around Schrunk Plaza, to separate groups from each other. During the incident, some members of each group present yelled and cursed at members of the other groups. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers
stopped several people carrying potential weapons and seized the weapons. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

Just after 1:00 pm, officers between Schrunk Plaza and Chapman Square claim people in Chapman Square began throwing objects toward officers and participants in the Patriot Prayer Rally. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, apparent bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

Police used their Long Range Acoustic Device (sound truck) to broadcast warnings, directing people to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the various announcements made by the sound truck, as well as the times they were broadcast. Initially, police announced that the south side of Chapman Square was closed. Police eventually broadcast warnings stating all of Chapman Square, and later all of Lownsdale Square, were closed.

Multiple protesters did not respond to these warnings and remained in Chapman Square. At approximately 3:30 pm, Rapid Response officers advanced to the north, toward Chapman Square. As they advanced, officers gave verbal warnings to clear the area. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north, with their batons. Some officers used other force, including pepper spray, .68 caliber impact rounds, 40mm impact rounds, aerial distraction devices and inert rubber ball distraction devices during this advance.

Officers continued to move protesters to the north, out of Chapman Square. When officers reached the north side of Chapman Square, they stopped. A group of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. After approximately 15 minutes, this group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections. Eventually, officers boxed in, or kettleled, members of the protest march near SW Morrison Street and SW 4th Avenue. Other Rapid Response squads relocated closer to Schrunk Plaza, as the Patriot Prayer Rally was ending. Police broke up some fights between various groups of protesters, as people left the area.

Some accused police of favoritism

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Multiple community members believed that protesters in Chapman Square were kettled to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, Rapid Response Team Lieutenants indicated protesters were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [PPB] to find a single point
of contact to convey information.” They indicated Rose City Antifa was therefore unable to communicate with the Rapid Response Protest Liaison Officer before June 4th.

The lieutenants indicated protesters were separated into “four distinct groups” prior to the protest, and those in Chapman Park were “more confrontational” and more “volatile” in comparison to the other three groups. They said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the union and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa. One lieutenant felt the right-wing protesters were “much more mainstream” than the left-wing protesters, with a group that was diverse in their viewpoints and tactics.

An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” Portland Police are also authorized to confiscate property for “safekeeping or the prevention of crime.” Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime. There is no specific instruction for property confiscation by police at a protest in PPB directive 635.10—Crowd Management/Crowd Control. After Action Reports from June 4th indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where it was then photographed and publicly displayed on the Police Bureau’s Twitter feed.

**Photos of property taken**

Federal Protective Services arrested a left-wing protester with the assistance of a militia member who was part of the Patriot Prayer, which contributed to the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that right-wing militia members “were working with police” in order to curtail the rights of left-wing protesters.

Former Police Chief Marshman was asked for the official Bureau policy on interacting with right-wing militia groups in a June 6th radio interview. He responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” He clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” He indicated Portland Police Officers “definitely encourage people not to get involved.”

**Protesters were kettled near Chapman Square**

On June 4, 2017, officers contained protesters in Chapman Square after they allegedly threw bricks and water balloons full of feces and urine at officers. This tactic is commonly referred to as
“kettling” (also be referred to as a “Box-In” or “Containment”). During kettling, police officers surround protesters and keep them in a certain place until police decide that they are free to leave. Kettling is utilized by domestic and international police departments and kettles can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

**MAP** show where kettling occurred

Kettling is controversial for a number of reasons. One of the most pressing concerns is the mass detention of bystanders who were not involved in any disruptive activity. There is active legal debate whether protesters who are kettled are under arrest, being temporarily detained, or being held in constructive custody. There is also a fundamental disagreement between those who believe that kettling de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment. The tactic may also present safety concerns because officers enclose protesters at very close proximity either party could become overwhelmed or outnumbered.

Former Rapid Response Team Incident Commander and retired Portland Police Captain Vince Elmore indicated kettling was a difficult process because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Reports from June 4th indicate that the kettle lasted over an hour. Elmore indicated he never used the box-in, preferring a police tactic called arrest circles as an alternative.

Vancouver, British Columbia’s Major Event Unit indicated that they do not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

The Rapid Response Team often uses a sound truck to make announcements and give orders to large crowds. Retired Captain Elmore indicated the announcements are screened by the Multnomah County District Attorney’s Office to “make sure [police] stay within first amendment rights.” Community members have said that directions can be hard to understand and even seem contradictory.

Lewis and Clark Law Professor Tung Yin was interviewed for a previous IPR Investigation concerning use of the kettling technique. Professor Yin referenced US Supreme Court Case Terry v. Ohio and indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” He indicated the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” Professor Yin indicated officers may utilize their discretion to arrest a certain amount of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

Willamette University Law Professor Laura Appleman indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. She stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” She indicated community
members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was very little reasonable suspicion to detain everyone contained in the kettle. The ACLU of Oregon had a legal observer who was mass arrested at Chapman Square and their Legal Director Mat Dos Santos indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” ACLU Staff Attorney Kelly Simon said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle. The controversial tactic was further complicated by the police’s order that protesters were not allowed to leave until they were photographed next to their ID or driver’s license.

**Police took photos of IDs**

Rapid Response officers did not allow protesters to leave the kettle until they were photographed next to their identification. Community members who were wearing masks or disguises to protect their identity were directed to remove them prior to being released. Rapid Response Team Lieutenants Dobson and Lee indicated this act was part of the initial investigation into the attempted assault on officers with bricks and other objects. The current status of the photographs and whether they were subject to a retention schedule is not yet known. PPB did not publicize if the data had been shared with other agencies, including the National Criminal Data Base, and did not disclose the manner in which the data would be purged. Portland Police had not utilized this tactic at any prior protest.

**Photo of Photographing IDs**

Mat Dos Santos of the Oregon ACLU argues that the act was a violation of protester’s Fourth Amendment rights, as the taking of the photographs constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” He described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and indicated the police violated Oregon State Law (ORS 181.575) which prohibits the collection and creation of files based on people’s political affiliation.” Many expressed concern over not knowing if Portland police had retained or shared the photographs and data with other law enforcement agencies.

Other police oversight agencies in Washington, DC and Berkeley, CA were not familiar with this tactic despite those cities frequency of protests. Seattle Police said that they do photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

Professor Appleman indicated she had not heard of any protesters previously being photographed by police for disorderly conduct. However, she indicated the US Supreme Court Case Hiibel v. Sixth Judicial District Court of Nevada ruled that people must submit identification to police when questioned, an act which would not elevate the stop to an arrest. Professor Appleman explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could claim damage had police entered their information into a photo database.

Officers working large protests sometimes operate under the impression that events have been
documented when they haven’t. In a previous investigation regarding police actions during a protest in February 2017, IPR discovered that multiple officers cited reports written by other officers that were never written. These omissions affected the ability of IPR to perform a thorough and accurate investigation. The community and IPR could have benefited from more concrete information concerning the storage and retention of the photographs and data collected on June 4th. Former PPB Chief Michael Marshman indicated in a 06/06/17 interview he hadn’t heard of PPB officers taking photos of ID’s during the June 4th protest, and stated he was unsure if one of the partner agencies was responsible for the act, as it was not PPB’s practice to do so.

Waiting for further clarification from sgt’s panel on this issue.

Community members expressed concerns after June 4th

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4th protest. The ACLU observed these issues on June 4th and has recommended changes to Police Bureau operations and policy but they felt that the Police Bureau has disregarded their comments. The ACLU of Oregon later filed a class action lawsuit on behalf of protesters, media and bystanders who were detained in the kettle.

After the June 4th event, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven different community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4th event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

***Infographic – Arrested – Charged – Convicted***

The Rapid Response Team said they have sometimes “backed off” in protests since June 4th based on the smaller size of the events, an interest in preserving resources, and in an attempt to let people “self-regulate.” Kettling and taking photos of protesters IDs do not seem to have been used since June 4th, but the Police have confiscated items they deem to be weapons.

Analysis and Recommendations

Crowd control situations present unique challenges for police officers on the ground and for police bureaus when writing policy and outlining the tactics available to groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must consider public safety concerns and be prepared. Keeping groups separated and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best way to ensure consistent application of crowd
control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

**Bias and seizing property**

Members of the public expressed concerns about Portland Police confiscating property from protesters in Chapman Square but not from other groups downtown. Jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner at a later time, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a claim receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

Attempting to contact groups prior to an event is a prudent measure but Portland Police should be aware that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members preferred to not interface with the police beforehand.

**Kettling and Photographing IDs**

As evidenced by the kettling on June 4th, the Police Bureau does not always consider the full range of consequences when it engages in some crowd control activities. The Bureau must understand there is a cost to any action that restricts someone’s freedom of movement. Even for actions that they have the authority to do, without transparent justification and guidance in a directive and operating procedure, the Rapid Response Team’s rationale for deploying such tactics will remain unclear to the public and the Bureau will be forced to explain its actions after the fact.

In terms of photographing protesters with their IDs, without strict policies around the use of this strategy and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies. Establishing a chain of custody is essential to the investigation of a crime and can be difficult at protests because of the need to pass information between detaining, arresting and investigating parties. Regardless, without reasonable suspicion in the first place, prosecution is impossible and efforts such as those taken on June 4th are futile at best and violate the public’s trust and rights at worst.

Police directives and policies must be specific to ensure that the Police Bureau has fully considered rights guaranteed under the First and Fourth amendments and not just chilling free speech. Without clarity and communication around the tactics employed on June 4th, members of the
public believe that Portland Police were engaged in tactics that unfairly targeted them and violated their rights. The lack of clarity also appeared to lead to confusion among police leadership about what actions were undertaken by the Bureau and whether they were within existing policy.

**Intergovernmental Agreements**

Well dictated policies around which tactics may and may not be used in crowd will also make it easier to coordinate with other agencies that participate in the RRT. Though they are reviewed annually, the agreements that Portland Police has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This idea is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than other agencies’.

The Rapid Response Team would also not want to be seen as deploying squads from other law enforcement agencies to “do their dirty work” because they fall outside the Bureau and IPR’s jurisdiction for accountability. Agreements should also be updated so that partner agencies must comply with requests from oversight agencies seeking to review events.

**Recommendations:**

1. When seizing property at events, follow procedures outlined in Directive 660.10 (Property and Evidence). Consider adding unique procedures for safekeeping and seizing property at protests to Directive 635.10 (Crowd Management/Crowd Control).

   7. Consider discontinuing the use of kettling as a containment tactic and add it to the list of “Prohibited Crowd Control Tactics.” Add specific language on mass arrests and mass detentions in Directive 635.10 (Crowd Management/Crowd Control) or which transparently justify the use of this tact as explaining the circumstances and restrictions on its use in Directive 635.10 (Crowd Management/Crowd Control).

   2.3. Develop a Police Directive specific to conducting stops and the probable cause requirements.

   2-4. Consider discontinuing the photographing of protesters’ IDs and add it to the list of “Prohibited Crowd Control Tactics” in Directive 635.10 or transparently justify the use of this tactic by explaining the circumstances and restrictions on its use in Directive 635.10 (Crowd Management/Crowd Control).

   4.5. Update intergovernmental agreements so that officers from other jurisdictions are expected to read and comply with applicable directives and have opportunity to be held accountable when they do not.

   5-6. Record encrypted police communications. Record encrypted police communications for oversight review and training purposes.
Independent Police Review


DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
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Executive Summary

Summarize major points and recommendations when we’re done

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early decades of the 20th Century. Since the early 1990s, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. More recently, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have generated concern in the community.

In September 2014, the Citizen Review Committee’s Crowd Control workgroup issued a report outlining concerns about the Bureau’s crowd control techniques. They recommended changes in twelve different areas including use of sound trucks, expansion of training, displaying name badges, establishing stronger community relations, releasing seized property, and more transparent processes around event permitting, police operating procedures, and expectations prior to events. Waiting on PPD Response

In 2015, the IPR Director also submitted a memo to the Police Chief outlining concerns that complainants expressed related to the Portland Police’s response to Michael Brown/Black Lives Matter protests in the previous year. Complainants indicated concerns regarding aggressive police tactics precipitating use of force, contradictory police commands to protestors, motorcycle and bicycle officers striking individuals with their vehicles, officers using batons, and officers aiming less-lethal weapons at protest participants.

The results of the Presidential election in November 2016 instigated widespread protests with several thousand demonstrators in attendance at series of protests in Portland. During the early months of 2017, large events demonstrating the policies of the new administration occurred on Inauguration Day, President’s Day and May Day also gained significant attention leading into the summer. The clashes between police and protestors.

Early 2017 also saw the rise in confrontations between right-wing and nationalist groups, alt-right activists, and anti-fascist counter-protesters. The right-wing conservative group Patriot Prayer scheduled a number of protests throughout the Portland, Seattle and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose these three cities to “liberate the conservatives on the West Coast.”

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to take place at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three left-wing-counter protesters were arrested during the march. Police ultimately provided TriMet buses for the conservative right-wing protesters to leave the event, an act which was perceived by many community members as favoritism.
On May 26, two men were fatally stabbed and another seriously injured on a MAX train when the men attempted to intervene when an individual started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, the man who later committed a racially-motivated double homicide and attempted murder on a TriMet MAX train in May, was charged with two counts of aggravated murder, attempted murder, and other related charges. It was soon learned that Christian had attended the April Patriot Prayer event was seen at this and had been videotaped giving Nazi salutes and referring to protesters by racial slurs prior to being escorted away by Portland Police officers.

After the murders, on the MAX train, many called on Patriot Prayer to cancel its "Free Speech Rally" set for June 4th at Terry Schrunk Plaza in Downtown Portland. Community members saw the event as Islamophobic and also cited Christian's association with Patriot Prayer and the fact that the victims were murdered and wounded while defending two Muslim teenagers prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for the "Free Speech" rally organizers to cancel the event. As Terry Schrunk Plaza is a small park on federal property, Mayor Wheeler filed a request with the federal government to revoke the already approved permits for the rally, which was denied. The mayor was strongly criticized by a number of advocacy organizations including the ACLU of Oregon which issued a statement saying, "The government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period." Patriot Prayer indicated they would not cancel their protest event. A number of organizations, including union groups, interfaith groups, and Rose City Antifa, scheduled counter-protests in the same vicinity as the Patriot Prayer rally on June 4th.

Portland Police maintains a Rapid Response Team

The Portland Police Bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, maintain a regular assignment while on the team and undergo an evaluation process before they join the team.

While often described as the Police Bureau's "riot cops," command staff describe them as the Police Bureau's unit responsible for responding to "mass events," as its unit equipped to handle mass incidents. Besides mass protests or demonstrations, the Rapid Response Team will deploy to other large gatherings, such as holiday festivals and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain with a lieutenant serving as the executive officer and divided into several squads. Each squad has its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington. The outside agencies will provide assistance, including personnel during a "major incident, natural disaster, or extreme civil disorder." Some of the law enforcement agencies that the Police Bureau maintains a mutual aid agreement with include the Oregon State Police, the Oregon State Fire Marshal's Office, and the Federal Bureau of Investigation.
agreement include including the Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Officers from these other agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and squads from other law agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters. RRT squads wear personal protective equipment, use force, and expend less lethal munitions during these trainings, ostensibly using the same decision-making process used during responses to actual protests and other incidents.

**PHOTO OF RRT MEMBERS**

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, protective armor, helmets, smoke canisters, gas canisters, and less lethal weapons. Officers often use different terms to describe this equipment. As an example, many community members describe squads in armor, helmets, and gas masks as “riot cops” while officers describe this as personal protective equipment.

In addition to Rapid Response squads, the Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. They are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

Rapid Response Team deployed on June 4th

Portland Police said they do a substantial amount of “intelligence work” prior to events. They try to find out which groups may be attending, and gauge the tenor of conversation around the event to decide if attendees may be violent. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event. Portland Police were concerned about the substantial conflict around events involving Patriot Prayer both in Portland and in other cities and decided to heavily staff the June 4th event so they had the resources to ensure public safety. The Rapid Response Team deployed on June 4th consisted of Portland Police, Multnomah County Sheriff’s Office and Oregon State Police officers.

Police Bureau personnel said they do a substantial amount of planning and preparation “intelligence work” prior to events. For the June 4 event the Police Bureau was concerned about the high risk of violence due to clashes at previous local rallies between individuals affiliated with Patriot Prayer and local anarchists and Antifa members.
Over 200 Police Bureau officers were deployed in response to the rally in variety of functions from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sherriff’s Office Rapid Response Team were part of the police response.

**Police Bureau Attempts to Contact Protest Participants**

Prior to an event, the Police Bureau will attempt to find out which groups may be attending, and gauge the tenor of conversation around the event to decide if attendees may be violent if there is a potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4th protest and counter protests. In the weeks leading up to the incident, this sergeant monitored open source social media platforms, and noted multiple individuals associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. This raised concerns due to previous protests in other cities had devolved into physical clashes between opposing groups.

The Special Events Sergeant contacted individuals associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant obtained assurances from multiple people that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4th. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group, and to express their concerns verbally, not physically.

On June 4th, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. People associated with the Patriot Prayer group and some counter-protest groups exchanged multiple text messages with the sergeant, and coordinated the response of their own security staff based on information provided by the sergeant. The individuals associated with Antifa exchanged fewer text messages with the sergeant. When the sergeant told them that counter protesters in Chapman Square were throwing things such as bricks and water bottles at the police, they denied it.

Portland Police were concerned about the substantial conflict around events involving Patriot Prayer both in Portland and in other cities and decided to heavily staff the June 4th event so they had the resources to ensure public safety. The Rapid Response Team deployed on June 4th consisted of Portland Police, Multnomah County Sherriff’s Office and Oregon State Police officers.
Different Groups Assembled in Parks

Downtown Parks

Terry Shrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon street. The parks are bracketed by SW 3rd and 4th Avenues.

Terry Schrunk Plaza is a small park located between Portland’s City Hall to the west, and the federal Edith Wyatt-Green Building to the east. Schrunk Plaza is not a City park, but is instead owned and administered by the federal government.

Chapman Square, is sits directly to the north of Schrunk Plaza, across SW Madison Street. The Portland Building sits to Chapman Square’s west across SW 4th Avenue, while the federal courthouse is sits to the east, across SW 3rd Avenue. Yet another park,

Lownsdale Square, is sits to the north of Chapman Square, across SW Main Street. The Multnomah County Circuit Courthouse sits lies to the west, Lownsdale Square’s west, while the Mark Hatfield United States Courthouse sits to the east.

These three parks and the streets around them formed the location of most of the events of June 4th.

Rapid Response officers were positioned at Chapman Square and in front of City Hall. Right-wing protesters, including members of Patriot Prayer, Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Schrunk Plaza.

There were three locations for those interested in protesting the Patriot Prayer Rally. A group of counter-protesters, The largest and most confrontational group of counter protesters, in Chapman Square. Union groups A counter protest organized by labor unions, collected in front of the Wyatt-Green Federal Building on SW 3rd across the street from Schrunk Plaza. A coalition of individuals called Portland Stands United Against Hate congregated in front of City Hall, and interfaith groups congregated near the Justice Center.

Those planning the Police Bureau’s response to the June 4 rally identified “four distinct groups” prior to the protest, and those in Chapman Park were “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves
from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. In Chapman Square, the Police Bureau estimated that roughly 150 “anarchists” would be present. The counter protest at City Hall was estimated that it would have between 500-600 persons in attendance.

***MAP***

Jurisdictional issues complicated the planning for the event and the public perception of the Police Bureau’s response. Federal Protective Services was positioned at Terry Schrunk Plaza. Some of the complaints IPR received indicated that some community members believed that Federal officers were part of the Rapid Response Team and receiving direction from Portland Police command staff under the control of the Police Bureau. Portland Police staff told us Federal Protective Services was involved in the pre-planning but emphasized that Federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last significant time they worked with Federal Protective Services during a significant event was in 2013 during Occupy Portland.

Rundown of events up to the Kettle Officers

Clear Chapman Square

Shortly before noon on June 4th, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza, to separate groups from each other. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Shunk Plaza. During the incidentally, some members of each group individuals located in Chapman Square and Schrunk Plaza yelled and cursed at members of the other group. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized the weapons. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

The Police Bureau used its sound truck to broadcast several warnings, directing individuals within the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the announcements made by the sound truck, as well as the times they were broadcast.

At 12:32pm, the Police Bureau sound truck made the following announcement:
This is the Portland Police Bureau streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

The warning was provided seven times between 12:32pm and 12:53pm.

Just after 1:00 pm, officers located on SW Madison between Schrunk Plaza and Chapman Square claimed individuals in Chapman Square began throwing objects toward officers and participants in the Patriot Prayer Rally. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, apparent bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

Between 1:02 pm and 2:44 pm the sound truck broadcast ten times, warning both sides to remain in their respective parks and that “offensive actions by either side would be taken as a criminal act. The announcement also warned that offenders would face arrest and the “park [Chapman] may be closed.”

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. A review of documents and video from community and police sources indicate that there were few issues at the counter protests held at City Hall and in front of the Wyatt-Green Building.

Police used their Long Range Acoustic Device (sound truck) to broadcast warnings, directing people to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the various announcements made by the sound truck, as well as the times they were broadcast. Initially, police announced that the south side of Chapman Square was closed. Police eventually broadcast warnings stating all of Chapman Square, and later all of Lownsdale Square, were closed.

At 3:15 pm, the sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square. Multiple protesters did not respond to the broadcast warnings and remained in Chapman Square. At approximately 3:30 pm, Rapid Response officers advanced to the north, toward Chapman Square. As they advanced, officers gave verbal warnings to clear the area. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north, with their batons. Some officers used other force, including pepper spray, .68 caliber impact rounds, 40mm impact rounds, aerial distraction devices and inert rubber ball distraction devices during this advance.

At 3:27 pm, the sound truck made the following announcement:
June 2016 Protest 4th Policy Review

At approximately 3:30 pm, members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

Between 3:30 pm and 4:14 pm the sound truck announced multiple times that initially Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north.

Officers continued to move protesters to the north, out of Chapman Square. When the officers stopped their advance upon reaching the north side of Chapman Square, they stopped. A group of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. The group estimated as roughly 200-300 persons, was declared an unlawful assembly at 3:51 pm. After approximately 15 minutes, this group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

Mass Detention at SW 4th and Morrison

At 4:21 pm, a group of counter protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police. The marchers were detained mid-block between SW 4th between SW Morrison and Alder. A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north while a Police Bureau RRT squad blocked SW Morrison. The detention was ordered by the Incident Commander for the purpose of investigating the crime of disorderly conduct. The detention was ordered after the incident commander consulted with a city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the NE corner of the intersection of SW 4th and Morrison when a state trooper deployed less lethal pepper balls at a group that attempted to climb up a parking garage stairway wall in an attempt to flee arriving officers. The group was apprehended by officers and identified. Those detained were later released.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:
This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.

Those detained where not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of the detained individuals, most of were released without charge. The detention lasted approximately one hour. Chief Marshman later wrote that photographing the identification of detained individuals was made to “speed up the process.” A review by IPR of reports filed by members of the Field Arrest Teams indicates that 389 individuals were photographed by the Police Bureau while detained at SW 4th Avenue.

Among those detained were several journalists including those employed by the Coos Bay World, Getty Images, the Oregonian, the Willamette Week, the Portland Tribune, and Vice Media. The journalists were processed in a similar process as the protestors and were required to be photographed and show identification prior to being released.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. Rapid Response Team squads relocated closer to Schrunk Plaza, as the Patriot Prayer Rally was ending. Police broke up scuffles between various groups of protesters, as people left the area.

Community Concerns

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to Police Bureau operations and policy but they felt that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After the June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

***Infographic – Arrested – Charged – Convicted*** for different events

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Eventually, officers boxed in, or kettled, members of the protest march near SW Morrison Street and SW 4th Avenue. Other Rapid Response squads relocated closer to Schrunk Plaza, as the Patriot Prayer Rally was ending. Police broke up some fights between various groups of protesters as people left the area.

Some accused police of favoritism

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Multiple community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, Rapid Response Team Lieutenant indicated protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [PPB] to find a single point of contact to convey information.” They indicated Rose City Antifa was therefore unable to communicate with the Rapid Response Protest Liaison Officer prior to June 4th.

The lieutenants indicated protesters were separated into “four distinct groups” prior to the protest, and those in Chapman Park were “more confrontational” and more “volatile” in comparison to the other three groups. They said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the union and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa. One lieutenant felt the right-wing protesters were “much more mainstream” than the left-wing protesters, with a group that was diverse in their viewpoints and tactics.

An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” Portland Police are also authorized to confiscate property for “safekeeping or the prevention of crime.” Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime. There is no specific instruction for property confiscation by police at a protest in PPB directive 635.10—Crowd Management/Crowd Control. After Action Reports from June 4th indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where it was then photographed and publicly displayed on the Police Bureau’s Twitter feed.

Bias and seizing property

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square but not from other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in
the confiscation of property. Portland’s City Code authorizes the police to confiscate “any
dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an
unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize”
dangerous or deadly weapons that “may be used to cause serious harm” “safekeeping or the
prevention of crime.” Directive 660.10 (Property and Evidence Procedure) also allows for police
to preemptively take custody of property that may be used in the commission of a crime.

Prior to the June 4 rally, the Police Bureau issued a press release noting its concerns for potential
of violence and warning that weapons and items that could be utilized as weapons could be
seized:

There will be a robust law enforcement presence due to online threats of violence
between different groups. Due to these threats and the potential for violence, persons
attending any of the events are discouraged from bringing any weapons (firearms, knives,
etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary
devices, etc.) to any of the events. Prohibited items may be seized by police and, if in
violation of city, state or federal law, the possessor may be arrested and charged
criminally.

The Police Bureau does not have a specific policy regarding the seizure of property during mass
events. After Action Reports from the June 4 event indicated that multiple objects used as
projectiles or potential weapons were collected from Chapman Square and taken to the Property
Evidence Division, where they were then photographed and displayed on the Police Bureau’s
Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with
groups in both Chapman Square and Schrunk Plaza. Jurisdictional issues may have led to some of
the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person
checks by the Federal Protective Service, Portland Police were working outside Schrunk Plaza so
officers by and large seized property from counter-protesters in and around Chapman Square.
Regardless, officers should ensure they follow the correct procedures for seizing property and do
so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner at a later time, officers should follow the
procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property
receipt. If unique measures are required for the seizure of property at large events, the Bureau
should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

Attempting to contact groups prior to an event is a prudent measure but Portland Police should
be aware that leaderless or less hierarchical groups are not inherently more dangerous and should
not necessarily be treated differently solely because their members prefer not to interact with the
Police Bureau.

**Photos of property taken**

Person Associated with Patriot Prayer Assists in Arrest
Multiple community members contacted IPR with their concern about perceived bias by the Police
Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer Federal Protective Services arresting a left-wing protestor. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, with the assistance of a militia member who was part of the Patriot Prayer, which fed into the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that right-wing militia members connected to Patriot Prayer were working with police in order to curtail the rights of left-wing protestor. Former Police Chief Marshman was asked for the official Police Bureau policy on interacting with right-wing militia groups in a June 6th radio interview. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” He clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” The Chief indicated Portland Police Officers definitely encourage people not to get involved.

Protesters were kettled near Chapman Square

Eventually, officers boxed in, or kettled, members of the protest march near SW Morrison Street and SW 4th Avenue. Other Rapid Response squads relocated closer to Schrunk Plaza, as the Patriot Prayer Rally was ending. Police broke up some fights between various groups of protesters, as people left the area.

On June 4, 2017, officers contained protesters in Chapman Square after they allegedly threw bricks and water balloons full of feces and urine at officers.

Police Use of a Kettle/Box-In

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protesters at SW Fourth Avenue and Morrison. Kettle is the most common term to describe the crowd control tactic where officers surround a group of protesters and keep them in a certain place until police decide that they are free to leave. The kettle or box-in is utilized by domestic and international police departments and kettles can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March, and the 2017 US Presidential Inauguration in Washington D.C.

The first documented use of the tactic in Portland involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die in” in front of the Justice Center...
at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides the demonstrators in the intersection and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by the individuals arrested for its inability to prosecute.

**MAP** show where kettling occurred.

The Kettle/box-in is controversial among activists for a number of reasons. One of the most pressing concerns is the mass detention of bystanders who were not involved in any disruptive or illegal activity. There is active legal debate whether protesters who are kettled are under arrest, being temporarily detained, or being held in constructive custody. There is also a fundamental disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment. The tactic may also present safety concerns because officers enclose protesters at very close proximity either party could become overwhelmed or outnumbered.

Former Rapid Response Team Incident Commander and retired Portland Police Captain Vince Elmore indicated a box-kettling was often difficult to execute because of its complexity and timing adding that, “[i]f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Reports from June 4th indicate that the kettle lasted over an hour. Elmore indicated he never used the box-in, preferring a police tactic called arrest circles as an alternative.

The June 4 mass detention, unlike the November 2014 incident, did not have officers surround the protestors on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW Fourth and Morrison had officers to the north and south, with buildings confining their movement to the east and west. Eventually additional officers responded to assist with the detention.

The Vancouver (B.C) Police Department, British Columbia’s Major Event Unit indicated that they do not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.

The Rapid Response Team often uses a sound truck to make announcements and give orders to large crowds. Retired Captain Elmore indicated the announcements are screened by the Multnomah County District Attorney’s Office to “make sure [police] stay within first amendment rights.” Community members have said that directions can be hard to understand and even seem contradictory.

Lewis and Clark Law Professor Tung Yin referenced the US Supreme Court Case Terry v. Ohio and indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” He indicated the “the tighter the
connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” Professor Yin indicated officers may utilize their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

Willamette University Law Professor Laura Appleman that IPR interviewed indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. She stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor indicated community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was no reasonable suspicion to detain everyone contained in the kettle for all persons detained on June 4. The ACLU of Oregon had a legal observer who was present at Chapman Square and indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” An ACLU Attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle. The controversial tactic was further complicated by the police’s order that protesters were not allowed to leave until they were photographed next to their ID or driver’s license.

Those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct, a review of the police reports and video provided by the Police Bureau finds little documentation of crowd behavior that articulates the reasonable suspicion had by officers prior to the detention of the marchers. While video taken by police and civilians at the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there was apparently no video or reports documenting vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding disorderly conduct.

Need for Police Bureau Policy for Mass Detention and Arrests

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal

1 ORS 166.025, Class B misdemeanor.
cases. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly charged event and allow for adequate training based on policy.

The lack of a written policy regarding mass detention and arrests deprives the Police Bureau of the opportunity of crafting a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process allows the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, use of a tactic seen as punitive by certain segments of the population will have to be weighed and the governmental interests it seeks to advance.

Any credible mass detention and arrest policy would need to provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible and what types of warning would need to be provided to demonstrators. The Policy will also have to consider the length of detention and are weather conditions suitable for holding a large group outside? The policy would also have to determine at what point would the Police Bureau have the obligation of providing those detained access to food, water, and restrooms.

Additionally, whenever there has been a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.

**Absent Exigent Circumstances Media or Legal Observers Should Not be Detained**

Currently, Directive 635.10(Crowd Control) prohibits the arrest of media and legal observers:

*Media or legal observers will not be arrest solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.*

There is no indication that the media representatives detained on June 4 had an opportunity to comply with police requests prior to being detained. The events of June 4, were of broad community and even national interest.

Directive 635.10 should be amended to include a general prohibition on the detention of media and legal observers.

**Police Documentation of Mass Events**

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers who are usually Forensic Evidence Division criminalists. The video is often taken from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to record events that may be of interest to criminal or administrative investigators.
Within the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. We would echo that suggestion and recommend that in addition to video from individual Rapid Response Team squads there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control videos do not include identifiers such as the time and date taken or identify the videographer. We would recommend that that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

**Police took photos of IDs**

Rapid Response Team officers did not release those detained at SW 4th and Morrison allow protesters to leave the kettle until they were photographed next to their identification. Community members who were wearing masks or disguises to protect their identity were directed to remove them prior to being released. Rapid Response Team Lieutenants Dobson and Lee, Police Bureau command staff interviewed by IPR, indicated this act was part of the initial investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained individuals and their identification quickly became controversial in some segments of the community. Chief Michael Marshman said in a June 6, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detain individuals on June 4, and wondered if one of the partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had in fact had been Bureau personnel who had taken the photographs.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This is in part may explain Chief Marshman’s initial statement in a June 21 memo. The current status of the photographs and whether they were subject to a retention schedule is not yet known. Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMs). Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” The Police Bureau currently does not have a retention policy for data entered into DIMS. Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” The Police Bureau currently does not have a retention policy for data entered into DIMS. Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” The Police Bureau currently does not have a retention policy for data entered into DIMS. Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” The Police Bureau currently does not have a retention policy for data entered into DIMS. Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” The Police Bureau currently does not have a retention policy for data entered into DIMS. Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.” The Police Bureau currently does not have a retention policy for data entered into DIMS. Chief Marshman also wrote, “Any photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of individuals and their **identifications**...
identification constituted a form of intelligence gathering by the Police Bureau or that the photos
taken would be shared with outside law enforcement agencies, particularly federal agencies. The
Police Bureau stated photographing detained persons and their identification was part of its
investigation into disorderly conduct and other crimes that occurred on June 4.

Mat Dos Santos of the Oregon ACLU When interviewed by IPR, the ACLU legal director stated his
belief that photographing the identification argues that the act of the detained individuals was a
violation of a protestor’s Fourth Amendment rights, as the taking of the photographs constituted
a seizure in which there was no way to prove “individualized reasonable suspicion.” He described
the situation as a surveillance scheme inconsistent with the protections afforded under the
constitution and indicated the police violated Oregon State Law (ORS 181.575) which prohibits
the collection and creation of files based on people’s political affiliation. Many expressed concern
over not knowing if Portland police had retained or shared the photographs and data with other
law enforcement agencies.

Other police oversight agencies in number of cities contacted by IPR such as Washington, DC
and Berkeley, CA were not familiar with this tactic despite those cities frequency of protests.
Seattle Police said that they do photograph protesters as part of the arrest process but added that
they have a very strong ordinance that prevents them from photographing crowds until crimes
are committed.

Professor Appleman The Willamette University professor indicated she had not heard of any
protesters previously being photographed by police for disorderly conduct. However, she
indicated the US Supreme Court Case Hiibel v. Sixth Judicial District Court of Nevada ruled that
people must submit identification to police when questioned, an act which would not elevate the
stop to an arrest. Professor Appleman explained the Supreme Court ruling meant “we live in a society
where you have to give your identification for everything.” She indicated a
protester could claim damage had police entered their information into a photo database.

Officers working large protests sometimes operate under the impression that events have been
documented when they haven’t. In a previous investigation regarding police actions during a protest in
February 2017, IPR discovered that multiple officers cited reports written by other officers that were never
written. These omissions affected the ability of IPR to perform a thorough and accurate investigation. The
community and IPR could have benefited from more concrete information concerning the storage
and retention of the photographs and data collected on June 4th. Former PPB Chief Michael Marshman
indicated in a 06/06/17 interview he hadn’t heard of PPB officers taking photos of ID during the June 4th
protest, and stated he was unsure if one of the partner agencies was responsible for the act, as it was not
PPB’s practice to do so. Detained Individuals Should Not Be Photographed Absent a Written Policy

The Police Bureau should recognize that some segments of the community does not trust police
or the City due to the past practice of the Police Bureau’s now inactive “Red Squad” which
conducted intelligence gathering activities, including photographing, of political activists. Without
clear policies around the use of photographs of detained person and the retention of records,
members of the public may believe they are being targeted for their political beliefs or that their
information is being shared with other law enforcement agencies.

It is important that a written policy consider our shared values under the First and Fourth
amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of the detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions no matter how well intentioned may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by the Bureau and whether they were within existing policy.

Community members expressed concerns after June 4th

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4th protest. The ACLU observed these issues on June 4th and has recommended changes to Police Bureau operations and policy but they felt that the Police Bureau has disregarded their comments. The ACLU of Oregon later filed a class action lawsuit on behalf of protesters, media and bystanders who were detained in the kettle.

After the June 4th event, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven different community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4th event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

The Rapid Response Team said they have sometimes “backed off” in protests since June 4th based on the smaller size of the event, an interest in preserving resources, and in an attempt to let people “self-regulate.” Kettling and taking photos of protesters’ IDs do not seem to have been used since June 4th, but the Police have confiscated items they deem to be weapons.

Analysis and Recommendations

Crowd control situations present unique challenges for police officers on the ground and for police bureaus when writing policy and outlining the tactics available to groups like the Rapid Response Team. When tensions between groups are as high...
as they were on June 4th, the police must consider public safety concerns and be prepared. Keeping groups separated and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best way to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

Bias and seizing property

Members of the public expressed concerns about Portland Police confiscating property from protesters in Chapman Square but not from other groups downtown. Jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner at a later time, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a claim receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

Attempting to contact groups prior to an event is a prudent measure but Portland Police should be aware that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members preferred to not interface with the police beforehand.
Kettling and Photographing IDs

As evidenced by the kettling on June 4th, the Police Bureau does not always consider the full range of consequences when it engages in some crowd control activities. The Bureau must understand there is a cost to any action that restricts someone’s freedom of movement. Even for actions that they have the authority to do, without transparent justification and guidance in a directive and operating procedure, the Rapid Response Team’s rationale for deploying such tactics will remain unclear to the public and the Bureau will be forced to explain its actions after the fact.

In terms of photographing protesters with their IDs, without strict policies around the use of this strategy and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies. Establishing a chain of custody is essential to the investigation of a crime and can be difficult at protests because of the need to pass information between detaining, arresting and investigating parties. Regardless, without reasonable suspicion in the first place, prosecution is impossible and efforts such as those taken on June 4th are futile at best and violate the public’s trust and rights at worst.

Police directives and policies must be specific to ensure that the Police Bureau has fully considered rights guaranteed under the First and Fourth amendments and not just chilling free speech. Without clarity and communication around the tactics employed on June 4th, members of the public believe that Portland Police were engaged in tactics that unfairly targeted them and violated their rights. The lack of clarity also appeared to lead to confusion among police leadership about what actions were undertaken by the Bureau and whether they were within existing policy.

Intergovernmental Agreements

Well dictated policies around which tactics may and may not be used in crowd will also make it easier to coordinate with other agencies that participate in the RRT. Though they are reviewed annually, the agreements that Portland Police has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This idea is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than other agencies’.

The Rapid Response Team would also not want to be seen as deploying squads from other law enforcement agencies to “do their dirty work” because they fall outside the Bureau and IPR’s jurisdiction for accountability. Agreements should also be updated so that partner agencies must comply with requests from oversight agencies seeking to review events.

Recommendations

Crowd control situations present unique challenges for police officers on the ground and for police
bureaus when writing policy and outlining the tactics available to groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureaus goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau's best way to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

**Recommendations:**

1. When seizing property at events, follow procedures outlined in Directive 660.10 (Property and Evidence). Consider adding unique procedures for safekeeping and seizing property at protests. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

2. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

3. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

4. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action of the event should review the actions of the officers involved.

5. The Police Bureau should amend Directive 635.10 to include a prohibition on the detention of media and legal observers. Consider discontinuing the use of kettling as a containment tactic and add it to the list of “Prohibited Crowd Control Tactics.” Add specific language on mass arrests and mass detentions in Directive 635.10 (Crowd Management/Crowd Control) or which transparently justify the use of this tactic by explaining the circumstances and restrictions on its use in Directive 635.10 (Crowd Management/Crowd Control).

6. Develop a Police Directive specific to conducting stops and the probable cause requirements.

7. Consider discontinuing the photographing of individuals detained but not changed with a crime absent a written policy governing the use of the photos, including who within the Police Bureau will have access to photos and whether they will be shared with other law enforcement agencies. Such a policy should
include a deadline after which the photographs must be destroyed if there are no criminal charges. protesters' IDs and add it to the list of “Prohibited Crowd Control Tactics” in Directive 635.10 or transparently justify the use of this tactic by explaining the circumstances and restrictions on its use in Directive 635.10 (Crowd Management/Crowd Control).

4.7 Update intergovernmental agreements so that officers from other jurisdictions are expected to read and comply with applicable directives and have opportunity to be held accountable when they do not.

5.8 Record encrypted police communications. Record encrypted police communications for oversight review and training purposes. Video footage of demonstrations taken by Police Bureau personnel should be time and date stamped with videographer's name.

Commented [JK6]: Will need to add a paragraph above talking about this.
Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

DATE

Mary Hull Caballero
City Auditor

Constantin Severe
Director

Office of the City Auditor
Portland, Oregon
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Executive Summary

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day, and May Day lead to multiple confrontations between police and protestors.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to "liberate the conservatives on the West Coast."

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder, and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” set for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer indicated they would not cancel their event.
groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

**Portland Police maintains a Rapid Response Team**

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents, including protests. The bureau formed the Rapid Response Team in 2001, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics, and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals, and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain with a lieutenant serving as the executive officer and divided into several squads, each led by a sergeant. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, helmets, smoke canisters, gas canisters, and less lethal weapons.

In addition to its own resources, the Police Bureau maintains interagency agreements with several laws enforcement agencies in Oregon and Washington including Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.
The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

Police Planning and Resources on June 4th

Police Bureau personnel said they do a substantial amount of planning and preparation prior to a demonstration or rally. Prior to an event, the Police Bureau attempts to find out which groups may attend and gauges the tenor of conversation around the event to assess the potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

For the June 4 event, the Police Bureau was concerned about the risk of violence due to clashes at previous local rallies between individuals affiliated with Patriot Prayer and local anarchists and Antifa members.

Over 200 Police Bureau officers were deployed in response to the rally in a range of functions from serving as members of mobile field teams, to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sherriff’s Office Rapid Response Team were part of the police response.

Police Bureau attempts to contact protest participants

Prior to an event, the Police Bureau attempts to find out which groups may attend and gauges the tenor of conversation around the event to assess the potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4 protest and counter-protests. In the weeks leading up to the incident, this sergeant the Bureau monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. In other cities, rising
tensions between opposing groups have led to violent physical altercations during mass protests. This raised concerns due to previous protests in other cities devolving into physical clashes between opposing groups.

The Special Events Sergeant Bureau contacted individuals associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

Groups Assembled in Downtown Parks

Commented [JK13]: if anyone can help this sentence read better, I’d be eternally grateful.

Commented [LA14]: You’ve sort of already said this. I think some reordering and you wouldn’t need to restate.

Commented [LA15]: This feels like less communication than with Patriot Prayer. This paragraph is less detailed. Someone could read into that and use it to show the police didn’t make as strong an effort or, on the other side, that Antifa wouldn’t talk to the police.

Commented [LA16]: I think this section goes into way too much detail on exactly where each group was standing. One good figure could show that. I would add where the protest groups were on your map, and then continue to use the same map to show the movement. It is really difficult to follow in narrative form.
Jerry Shrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.

Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Schrunk Plaza which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Wyatt-Green Federal Building on SW 3rd across the street from Shrunk Plaza. A coalition of individuals called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Ave.

The Police Bureau identified “four distinct groups” prior to the protest and stated in planning documents the group planning to be in Chapman Park was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event and the public perception of the Police Bureau’s response. Federal Protective Services was positioned at Terry Schrunk Plaza. IPR complaints showed that some community members believed that the federal officers were part of the Rapid Response Team and under the control of the Police Bureau. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk

Commented [LA17]: This section needs an introduction. Explain that the protest was going to be in downtown and there were going to be multiple groups involved. The police had done work to make sure the groups stayed separate. Patriot Prayer had a permit for the park, blah blah. Set the stage.

Commented [LA18]: I would delete this whole paragraph.

Commented [LA19]: Move this up. This paragraph should be near the beginning.

Commented [LA20]: Move this up as well. This is part of setting the stage and explaining the police planning process.

Commented [LA21]: Put this elsewhere. The rest of this paragraph is about the planning process, but this sentence is talking about after the protest. It’s confusing.
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Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland.

Officers Clear Chapman Square

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza, to separate the opposing demonstrators from each other. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Shrunk Plaza. During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant. Antifa members exchanged fewer text messages with the sergeant. When the sergeant told counter protest organizers in Chapman Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing individuals within the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the announcements made by the sound truck, as well as the times they were broadcast.

12:32 PM

The Police Bureau sound truck made the following announcement:

This is the Portland Police Bureau streets and avenues open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.

Commented [LA22]: What does this mean? Do they mean they aren’t used to working together so it was hard to plan? Was it a communication issue? Did they not get along? I want more detail here, because I don’t know exactly what this means so my mind fills in the gaps for me.

Commented [LA23]: This is all planning, not part of the groups actually assembling. I think this goes in an earlier section.

Commented [LA24]: So was the communication not clear? Did Antifa not respond? Or did the sergeant not reach out as often?

Commented [LA25]: Something like this timeline might be helpful for the bureau planning process (when did they know the protest was going to happen? When did they reach out to the various groups? When did they talk to other agencies?)
The warning was provided seven times between 12:32pm and 12:53pm.

Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

The sound truck broadcast ten times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that "participants" would face arrest and the "park [Chapman] may be closed.”

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources indicate few issues at the counter-protests held at City Hall and in front of the Wyatt-Green Building.

The sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protesters in Chapman Square to the broadcast police warnings.
The sound truck made the following announcement:

>This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

3:30 PM
Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

3:30 PM-4:14 PM
The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north.

3:51 PM
Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square. A group of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. The group estimated as roughly 200-300 persons, was declared an unlawful assembly at 3:51 pm.

4:05 PM
After approximately 15 minutes, this group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

Mass Detention at SW 4th and Morrison
At 4:21 pm, a group of counter-protesters originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police. The marchers were detained mid-block between SW 4th and Lownsdale Square. A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th.
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4th Avenue while a Police Bureau Rapid Response Team squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained. The only reported use of force at the detention occurred at the NE corner of the intersection of SW 4th and Morrison when a state trooper deployed less lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group. Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of the detained individuals, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that photographing the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams indicates that 389 individuals were photographed by the Police Bureau while detained at SW 4th Avenue.

Commented [LA31]: This is important and it's buried in the middle of a paragraph. This should be in the timeline and mentioned again in a topic sentence.

Commented [LA32]: Who was it? Name him/her. Was he/she the only one who made an estimate? This feels weird here.

Commented [LA33]: This feels out of place here. Just randomly shifts to use of force and then back to the protest.

Commented [LA34]: This is somewhat jargon-y. What does this mean? Were they supposed to be given a warning? Is that a law? Is it policy? What is the consequence of no warning?
Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, the Oregonian, the Willamette Week, the Portland Tribune, and Vice Media. The journalists were processed in a similar process as the protestors and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

Community Concerns

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to Police Bureau operations and policy but they felt that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.

After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on

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<th>Arrests at Protests in 2017</th>
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<td>January 20th</td>
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their website about police response at the June 4 event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

**Accusations of Favoritism by Police**

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Multiple community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team indicated protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.” Police Bureau personnel indicated the Rapid Response Protest Liaison Officer was unable to communicate with Rose City Antifa prior to June 4.

**Bias and seizing property**

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square but not from other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also allows for police to preemptively take custody of property that may be used in the commission of a crime.

Prior to the June 4 rally, the Police Bureau issued a press release noting its concerns for potential of violence and warning that weapons and items that could be utilized as weapons could be seized:

> There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

Commented [LA38]: This might belong in a separate section all about IPR actions after this event. How many people contacted IPR, what were their complaints, how did it fit into the overall context of the year (did we get more complaints from this event than others?)

Commented [LA39]: This is vague. Treated differently in what way? Communication? Use of force?

Commented [LA40]: Mention this earlier when you are talking about communication prior to the event.

Commented [LA41]: This doesn’t explain what the jurisdictional differences are. Do any of these laws conflict with other jurisdictions? Do they not have to follow city code? (If not, why not?)

Commented [LA42]: This should come earlier when you are discussing things that happened before the event.
The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).

Bias in Planning and Communication

Attempting to contact groups prior to an event is a prudent measure but the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence as well as sending out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound trucks warning, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and statements to media.
but a website may provide a single, centralized place for such information.

**Recommendations:**

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

**Person Associated with Patriot Prayer Assists in Arrest**

Multiple community members contacted IPR with their concern about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, which fed into the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protestors.

Former Police Chief Marshman was asked for the Police Bureau policy on interacting with right-wing militia groups in a June 6 radio interview. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” The Chief indicated Police Bureau members “definitely encourage people not to get involved.”

**Police Use of a Kettle/Box-In**
In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protestors at SW Fourth Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protestors and access out of the containment is controlled by law enforcement. Activist groups and media generally call this tactic a kettle, while the Police Bureau refers to the tactic as a “box-in” or “containment”. The kettle or box-in is utilized by domestic and international police departments and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 US Presidential Inauguration in Washington D.C.

The first documented use of the tactic in Portland involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The Kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

A former Police Bureau incident commander indicated a box-in is often difficult to execute because of its complexity and timing adding that, “if you can make the box-in, bring in a team to make the arrests, and get out— if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.”

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protestors on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW Fourth and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The Vancouver (B.C) Police Department indicated it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.
A law professor interviewed during an investigation of the 2014 mass detention and arrest, referenced the US Supreme Court case *Terry v. Ohio* and indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor indicated the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may utilize their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University professor that IPR interviewed indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor indicated community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. The ACLU of Oregon had a legal observer who was present at Chapman Square and an ACLU legal director indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police
reports and video provided by the Police Bureau finds little documentation of crowd behavior that articulates the reasonable suspicion had by officers prior to the detention of the marchers. No witnesses were interviewed regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding disorderly conduct.

**Need for Police Bureau Policy for Mass Detention and Arrests**

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR found its efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau to prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

The lack of a written policy regarding mass detention and arrests additionally deprives the Police Bureau of the opportunity of crafting a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by certain segments of the population. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible and what types of warning would need to be provided to demonstrators. The policy will also have to consider the length of detention and if weather conditions suitable for holding a large group outside. The policy would also have to determine the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water, and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.
Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

**Absent Exigent Circumstances Media or Legal Observers Should Not be Detained**

Currently, Directive 635.10 (Crowd Control) prohibits the arrest of media and legal observers:

*Media or legal observers will not be arrest solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.*

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4, were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns.

Recommendation:

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

**Police Documentation of Mass Events**

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers who are usually Forensic Evidence Division criminalists. Video is often taken from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to

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record events that may be of interest to criminal or administrative investigators.

In the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. We would echo that suggestion and recommend that in addition to video from individual Rapid Response Team squads there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time and date taken or the videographer. We would recommend that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. The Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

Police Photographing Detained Individuals

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR indicated this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained individuals and their identification quickly became controversial in some segments of the community.

Chief Marshman said in a June 6, 2017 Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4 and wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken...
the photographs.

Many community members contacted IPR with their concern over not knowing if the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. An additional concern voiced by some was a fear that the photographing of individuals and their identification constituted a form of intelligence gathering by the Police Bureau or that the photos would be shared with outside law enforcement agencies, particularly federal agencies. The Police Bureau stated photographing detained persons and their identification was part of its investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the [ACLU legal director] stated his belief that photographing the identification of the detained individuals was a violation of a protester’s Fourth Amendment rights, as the taking of the photographs constituted a seizure in which there was no way to prove “individualized reasonable suspicion.” The legal director described the situation as a surveillance scheme inconsistent with the protections afforded under the constitution and indicated the police violated Oregon State Law (ORS 181.575) which prohibits the collection and creation of files based on people’s political affiliation.”

Other police oversight agencies in number of cities contacted by IPR such as Washington, DC and Berkeley, CA were not familiar with this tactic despite those cities frequency of protests. Seattle Police said that they do photograph protesters as part of the arrest process but added that they have a very strong ordinance that prevents them from photographing crowds until crimes are committed.

The Willamette University professor indicated she had not heard of any protesters previously being photographed by police for disorderly conduct. However, the professor indicated the US Supreme Court Case *Hiibel v. Sixth Judicial District Court of Nevada* ruled that people must submit identification to police when questioned, an act which would not elevate the stop to an arrest. The professor explained the Supreme Court ruling meant “we live in a society where you have to give your identification for everything.” She indicated a protester could seek damages if police inappropriately entered their information into a photo database.

Neither members of the community or Police Bureau that IPR contacted during this review were aware of prior instances of Bureau members photographing detained individuals during a mass detention. There is currently no Police Bureau Directive that provides guidance for photographing individuals during a mass detention. This, in part, may explain Chief Marshman’s initial statement. In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System (DIMS). Chief Marshman also wrote, “[a]ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.” During this review, IPR inquired whether the Police Bureau still had the photos of the detained individuals and their identification in its possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered to be removed. Additionally, the photos are subject to a legal hold, which prohibits their destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention policy for data entered into DIMS allowing for photos to be held indefinitely until staff are told to
delete them.

**Detained Individuals Should Not Be Photographed Absent a Written Policy**

The Police Bureau should recognize that segments some members of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain individuals and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect our shared values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

**Recommendation:**

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:

- who within the Police Bureau will have access to photos,
- whether they will be shared with other law enforcement agencies, and
- a deadline after which the photographs must be purged if there are no criminal charges.

**Intergovernmental Agreements**

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside agencies. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies with less stringent use of force policies in an attempt to avoid the Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times.
times by community members.

Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies making their employees or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

12. **Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies.**

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.

Commented [LA82]: What has the Bureau said about this? It seems like a really difficult requirement. You have to know all your own policies plus know another agencies policies in the off chance you might sometime collaborate with them? And why would the default be PPB policies? Why can’t PPB follow OSP instead? This seems fraught with complication.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureaus goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureaus best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

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Independent Police Review

Policy Review: Portland Police Bureau
Response to June 2017 Rally & Protest

DATE

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Portland, Oregon
Released in MONTH, YEAR

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June 2017 Protest Policy Review

Executive Summary

Summarize major points and recommendations when we’re done

Protests have become common in Portland

Political activism and protest have a long history in Portland dating to the early 20th Century. Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day, and May Day lead to multiple confrontations between police and protestors.

Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters. The conservative group Patriot Prayer scheduled rallies in the Portland, Seattle, and San Francisco metro areas during 2017. The group’s leader, Joey Gibson, chose those cities to "liberate the conservatives on the West Coast."

In late April, Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood of Portland. The event was scheduled to occur at the same time as a community parade, which was eventually cancelled due to safety concerns. The organizing group was met with resistance from various counter-protesters, including members of Rose City Antifa, as they marched down SE 82nd Avenue. Three counter-protesters were arrested during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train when they attempted to intervene when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, was charged with two counts of aggravated murder, attempted murder, and other related charges. Christian attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protesters by racial slurs prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” set for June 4 at Terry Schrunk Plaza in downtown Portland. Many community members saw the event as Islamophobic citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In light of the recent deaths and increased community concern, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government refused to do citing free speech concerns. The Mayor was strongly criticized by some advocacy organizations including the ACLU of Oregon which responded, “(t)he government cannot revoke or deny a permit based on the viewpoint of the demonstrators. Period.” Patriot Prayer indicated they would not cancel their event.
groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4th in the same vicinity as the Patriot Prayer rally.

**Portland Police maintains a Rapid Response Team**

The Portland Police Bureau’s Rapid Response Team is the unit most regularly deployed to mass incidents. The bureau formed the Rapid Response Team in 2003, in an effort to better coordinate its response to protests and other incidents in the Portland area. Members are volunteers, receive additional training in Police Bureau-approved crowd control tactics, and maintain a regular duty assignment while on the team. Officers undergo an evaluation process prior to joining the team.

Besides mass protests or demonstrations, the Rapid Response Team deploys to other large gatherings, such as holiday festivals and recently took part in search and rescue operations during wildfires in the Columbia River gorge. The Rapid Response Team would also be expected to respond to an earthquake or other natural disasters.

The Rapid Response Team is led by a captain with a lieutenant serving as the executive officer and divided into several squads, each led by a sergeant. Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields, helmets, smoke canisters, gas canisters, and less lethal weapons.

In addition to its own resources, the Police Bureau maintains interagency agreements with several laws enforcement agencies in Oregon and Washington including Oregon State Police, Multnomah County Sheriff’s Office, and Washington County Sheriff’s Office. Outside agencies agree to provide assistance, including personnel, during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team, and deploy to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

In their scenario-based training, Rapid Response Team squads and units from other law enforcement agencies work together to respond to the scenario, while leadership and command staff from the Police Bureau monitor and direct the response, using the Incident Command System. The trainings are structured to be as realistic as possible, with some officers acting in the role of protesters.
June 2017 Protest Policy Review

The Police Bureau also deploys Mobile Field Force officers during protests and other incidents. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. Mobile Field Force officers are meant to supplement and reinforce the Rapid Response Team’s response to an incident.

Police Planning and Resources on June 4th

Police Bureau personnel said they do a substantial amount of planning and preparation prior to a demonstration or rally. For the June 4 event, the Police Bureau was concerned about the risk of violence due to clashes at previous local rallies between individuals affiliated with Patriot Prayer and local anarchists and Antifa members.

Over 200 Police Bureau officers were deployed in response to the rally in a range of functions from serving as members of mobile field teams to providing support at the Emergency Operations Center. Additionally, two squads of Oregon State Police Mobile Response Team and a squad from the Multnomah County Sheriff’s Office Rapid Response Team were part of the police response.

Police Bureau attempts to contact protest participants

Prior to an event, the Police Bureau attempts to find out which groups may attend and gauges the tenor of conversation around the event to assess the potential for violence. A police sergeant attempts to contact leaders of the various groups and discuss their plans for attending the event.

Central Precinct’s Special Events Sergeant took on this role for the June 4 protest and counter-protests. In the weeks leading up to the incident, this sergeant monitored open source social media platforms and noted users associated with both the Patriot Prayer group and Antifa were making threats and inflammatory statements about each other. This raised concerns due to previous protests in other cities devolving into physical clashes between opposing groups. This exchange of threats concerned the Police Bureau, as some recent protests in other cities had devolved into physical clashes between opposing groups.

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Commented [BE3]: Another version, for your consideration. It might be worth doing a separate ‘graf on this very issue.
The Special Events Sergeant contacted individuals associated with the Patriot Prayer Rally, including event organizer Joey Gibson, and multiple individuals who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. The sergeant was assured that participants in the Patriot Prayer Rally would not bring firearms with them to the rally.

The Special Events Sergeant also contacted multiple people associated with Antifa, and other groups planning on holding counter-protests on June 4. During these contacts, the sergeant asked these groups to remain physically separated from the Patriot Prayer group and to express their concerns verbally, not physically.

Groups Assembled in Downtown Parks

Terry Shrunk Plaza, Chapman Square, and Lownsdale Square are a sequence of public parks which run south to north from SW Jefferson Street to SW Salmon street. The parks are bracketed by SW 3rd and 4th Avenues. The three parks and the streets around them formed the location of most of the events of June 4th.

Those associated with the Patriot Prayer Free Speech Rally, assembled in Terry Shrunk Plaza which is owned and administered by the federal government.

There were three locations for those interested in protesting the Patriot Prayer Rally. The largest and most confrontational group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions collected in front of the Wyatt-Green Federal Building on SW 3rd across the street from Shrunk Plaza. A coalition of individuals called Portland Stands United Against Hate congregated in front of City Hall on SW 4th Ave.

The Police Bureau identified
“four distinct groups” prior to the protest and stated in planning documents the group planning to be in Chapman Park was “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Prior to the rally, the Police Bureau estimated that approximately 200 people would attend the “Free Speech Rally” at Schrunk Plaza. The Police Bureau estimated that roughly 150 “anarchists” would be present in Chapman Square and 500-600 people would attend the counter-protest at City Hall.

Jurisdictional issues complicated planning for the event and the public perception of the Police Bureau’s response. Federal Protective Services was positioned at Terry Schrunk Plaza. IPR complaints showed that some community members believed that the federal officers were part of the Rapid Response Team and under the control of the Police Bureau. Police Bureau staff stated that Federal Protective Services was involved in the pre-planning but emphasized that federal officers had autonomy to make arrests and conduct searches on people entering the Schrunk Plaza. The Rapid Response Team said they made substantial effort to make sure that information was being communicated freely between agencies but added that the last time they worked with Federal Protective Services during a significant event was during Occupy Portland.

**Officers Clear Chapman Square**

Shortly before noon on June 4, Rapid Response Team squads formed skirmish lines around Terry Schrunk Plaza, to separate the opposing demonstrators from each other. Two squads from the Police Bureau Rapid Response Team formed a skirmish line on SW Madison Street, facing north. A skirmish line of Federal Protective Service officers faced south towards Schrunk Plaza. During the rally, individuals located in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas, and came closer to members of other groups. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. A number of people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles, and smoke bombs.

During the event, the Special Events Sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protesters exchanged multiple text messages with the sergeant. Antifa members exchanged fewer text messages with the sergeant. When the sergeant told counter protest organizers in Chapman
Square that individuals within the square were throwing bricks and water bottles at police, the organizers denied it.

The Police Bureau used its sound truck to broadcast several warnings, directing individuals within the crowd to stop throwing dangerous objects, and to move to the north, out of Chapman Square. Police reports document the announcements made by the sound truck, as well as the times they were broadcast.

**12:32 PM**

The Police Bureau sound truck made the following announcement:

*This is the Portland Police Bureau streets and avenues are open to vehicular traffic only. If you remain in the roadway you may be subject to arrest for disorderly conduct. Patriot Prayer Group must remain in Schrunk Plaza. Counters must remain in Chapman Square.*

The warning was provided seven times between 12:32pm and 12:53pm.

**1:00 PM**

Officers located on SW Madison claimed individuals in Chapman Square began throwing objects toward officers and participants at the Patriot Prayer Rally in Schrunk Plaza. Police reports indicate these objects included eggs, full water bottles, full soda cans, marbles, rocks, bricks, fireworks, bloody tampons, and balloons filled with malodorous substances, including possible feces or urine. Police also observed protesters using slingshots to launch some objects at officers and documented multiple officers being struck by objects, in some cases sustaining injuries. Police reports indicated numerous protesters in Chapman Square wore masks or gas masks, and carried improvised shields.

**1:02 PM – 2:44 PM**

The sound truck broadcast ten times, warning both sides to remain in their respective parks and that “offensive actions by either side” would be taken as a criminal act. The announcement also warned that offenders would face arrest and the “park [Chapman] may be closed.”

**1:45 PM**

The police estimated by 1:45 pm that there were 300 individuals in Schrunk Plaza, 600 in Chapman Square and 1,200 at City Hall. Documents and video from community and police sources indicate few issues at the counter-
protests held at City Hall and in front of the Wyatt-Green Building.

The sound truck announced that the south side of Chapman Square was closed due to “criminal activity”, requesting that those present moves to the center of the park.

Video from Police Bureau and civilian sources show a limited response by protestors in Chapman Square to the broadcast police warnings.

The sound truck made the following announcement:

\[3:27 \text{ PM}\]

This is the Portland Police Bureau. This is determined to be an unlawful assembly. You must disperse the area. Officers are being assaulted by members of your group.

Members of the Police Bureau, Multnomah County Sheriff’s Office, and Oregon State Police advanced into Chapman Square. As they advanced, officers gave verbal warnings to move to the center of the park. Some protesters locked arms with each other or moved toward the advancing officers. When the police skirmish line met the remaining protesters, officers pushed protesters to the north. Some officers used other force, including pepper spray, rubber ball distraction devices, and less lethal impact rounds. Officers also deployed aerial distraction devices and inert rubber ball distraction devices during this advance.

The sound truck announced multiple times that Chapman Square and then Lownsdale Square were closed and that those present were required to “disperse the area.” Those remaining in the squares were warned that they were subject to arrest. Individuals were advised to leave to the north.

Officers continued to move protesters to the north, out of Chapman Square. The officers stopped their advance upon reaching the north side of Chapman Square. A group of several hundred protesters remained in SW Main Street and in Lownsdale Square to the north. The group estimated as roughly 200-300 persons, was declared an unlawful assembly at 3:51 pm.
After approximately 15 minutes, this group of protesters began to march to the north, away from Lownsdale Square. Rapid Response squads relocated, and blocked the progress of the march at several intersections.

Mass Detention at SW 4th and Morrison

At 4:21 pm, a group of counter-protestors originally located in Chapman Square were detained by members of the Portland Police Bureau and Oregon State Police. The marchers were detained mid-block between SW 4th between SW Morrison and Alder. A squad of state troopers were able to get in front of the marchers at SW Alder and prevent the march from continuing north on SW 4th Avenue while a Police Bureau Rapid Response Team squad blocked SW Morrison to the south. The detention was ordered by the Incident Commander to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a Portland city attorney and a member of the Multnomah County District Attorney’s Office present at the Emergency Operations Center. An officer on scene estimated that 250-300 people were detained.

The only reported use of force at the detention occurred at the NE corner of the intersection of SW 4th and Morrison when a state trooper deployed less lethal pepper balls at a small group attempting to escape the containment by climbing up a parking garage stairway. The group was apprehended by officers and identified. Those detained were later released without being criminally charged.

At 4:23 pm the sound truck made the following announcement, which was repeated twice:

*This is the Portland Police Bureau. You are being detained for the investigation of disorderly conduct. We will be making arrests based upon probable cause.*

Between 4:30 pm and 5:23 pm, the sound truck made the following announcement four times:

*This is the Portland Police. Everyone being detained for disorderly conduct will be identified. Please have your ID ready and you will be processed three at a time. Your cooperation will speed the process. Once you have been released, if you do not leave the area you are subject to arrest.*

There is no record of a dispersal order or a warning being given at SW 4th and Morrison prior to the detention of the group.
Those detained were not allowed to leave until they and their identification were photographed by police. Those without identification were required to provide contact information prior to their release. While officers arrested some of the detained individuals, most were released without charge. The mass detention lasted approximately one hour. Then Police Chief Marshman later wrote that photographing the identification of detained individuals was made to “speed up the process.” IPR’s review of police reports filed by members of the Field Arrest Teams indicates that 389 individuals were photographed by the Police Bureau while detained at SW 4th Avenue.

Among those detained were several journalists, including those employed by the Coos Bay World, Getty Images, the Oregonian, the Willamette Week, the Portland Tribune, and Vice Media. The journalists were processed in a similar process as the protestors and were required to be photographed and show identification prior to release.

During the mass detention, Federal Protective Services officers closed Terry Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza where police broke up scuffles between various groups of protesters, as people left the area.

Community Concerns

The ACLU of Oregon provided IPR with written concerns about police bias against protesters, broad declarations of unlawful assembly, incommensurate use of force, and the use of mass arrests and detention as crowd control after the June 4 protest. The ACLU observed these issues on June 4 and has recommended changes to Police Bureau operations and policy but they felt that the City has disregarded their comments. The ACLU of Oregon later filed a lawsuit on behalf of protesters, media and bystanders who were detained.
After June 4, individual complainants also contacted IPR to voice concerns and share observations about the police. Twenty-seven community members contacted IPR with concerns of mass detention and profiling, police use of non-lethal munitions, and bias shown by the police against leftist protesters. Rose City Antifa expressed concerns on their website about police response at the June 4 event, particularly about mass detention that led to protesters being individually searched and photographed with their identification.

Accusations of Favoritism by Police

Community members perceived disparities in how Portland Police treated the different groups of protesters, ranging from the quantity and types of objects confiscated to individual and mass arrests. Multiple community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. In response to a question about perceived bias against left-wing protesters, a lieutenant with the Rapid Response Team indicated protesters in Chapman Square were treated differently due to Rose City Antifa lacking a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.” Police Bureau personnel indicated the Rapid Response Protest Liaison Officer was unable to communicate with Rose City Antifa prior to June 4.

Bias and seizing property

Members of the public expressed concerns about the Police Bureau confiscating property from protesters in Chapman Square but not from other groups downtown. An ACLU staff attorney stated the “majority” of things she observed police to have taken from the protesters in Chapman Square were “poles from signs,” whereas the protesters in Terry Schrunk Plaza were allowed to have “giant flag poles.” This specific concern could be attributed to jurisdictional differences in the confiscation of property. Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Portland Police Directive 660.10 (Property and Evidence Procedure) also
allows for police to preemptively take custody of property that may be used in the commission of a crime.

Prior to the June 4 rally, the Police Bureau issued a press release noting its concerns for potential of violence and warning that weapons and items that could be utilized as weapons could be seized:

There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

The Police Bureau does not have a specific policy regarding the seizure of property during mass events. After Action Reports from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were then photographed and displayed on the Police Bureau’s Twitter feed.

A review of police reports indicate that police confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Again, jurisdictional issues may have led to some of the imbalance in seized property. Those entering Schrunk Plaza were submitted to bag and person checks by the Federal Protective Service. Portland Police were working outside Schrunk Plaza so officers by and large seized property from counter-protesters in and around Chapman Square. Regardless, officers should ensure they follow the correct procedures for seizing property and do so consistently to avoid the appearance of bias or of targeting specific groups.

If seized property can be returned to the owner later, officers should follow the procedures in Directive 660.10 (Property and Evidence) and provide the owner with a property receipt. If unique measures are required for the seizure of property at large events, the Bureau should consider adding them to the Directive 635.10 (Crowd Management/Crowd Control).
Bias in Planning and Communication

Attempting to contact groups prior to an event is a prudent measure but the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not necessarily be treated differently solely because their members prefer not to interact with the Police Bureau.

During this review, many community members stated that they were unaware of the Police Bureau’s authority for its actions or why it had taken certain actions. The Police Bureau maintains a robust social media presence as well as sending out regular press releases, but having a website for specific events that could include relevant statutory and city code authority as well as disseminate in real time sound trucks warning, concerns about crowd behavior, and actions taken by officers. The Police Bureau already does some of this on social media and statements to media but a website may provide a single, centralized place for such information.

Recommendations:

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

Person Associated with Patriot Prayer Assists in Arrest

Multiple community members contacted IPR with their concern about perceived bias by the Police Bureau after video circulated on social media of an individual affiliated with Patriot Prayer assisting a federal officer arresting a counter-protester. The officer was initially misidentified by multiple media outlets as a member of the Police Bureau, which fed into the perception of police bias against the protesters in Chapman Square. One of the leaders of the protest group Portland’s Resistance, Gregory McKelvey, wrote online that individuals connected to Patriot Prayer “were working with police” to curtail the rights of counter-protestors.

Former Police Chief Marshman was asked for the Police Bureau policy on interacting with right-wing militia groups in a June 6 radio interview. Chief Marshman responded that it was “not uncommon if an officer is struggling with somebody or trying to arrest somebody for a member of the public to either render assistance or just ask,” during instances which occur “out of the protest arena.” Chief Marshman indicated he has had citizens assist with an arrest or had civilians “stand by and watch to make sure other people don’t enter into the scuffle that’s going on in the moment” a “number of times.” Chief Marshman clarified that Portland Police officers do not “ask for assistance,” and stated, “[p]eople just kind of come in.” The Chief indicated Police Bureau members “definitely encourage people not to get involved.”
Police Use of a Kettle/Box-In

In the days following the June 4 protest, a number of community members contacted IPR stating that the Police Bureau had “kettled” protestors at SW Fourth Avenue and Morrison Street. Kettle is the most common term to describe the crowd control tactic when officers surround a group of protestors and access out of the containment is controlled by law enforcement. Activist groups and media generally call this tactic a kettle while the Police Bureau refers to the tactic as a box-in or containment. The kettle or box-in is utilized by domestic and international police departments and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen. Some notable uses of the tactic have been during the 2010 Toronto G20 summit, 2014 Berkeley Student March and the 2017 US Presidential Inauguration in Washington D.C.

The first documented use of the tactic in Portland involving a large group of people occurred on November 29, 2014, following the decision of a Saint Louis County, Missouri grand jury not to indict a white police officer who killed Michael Brown, an 18-year-old black man. After several days of protests, a group of 50-100 demonstrators were holding a “die-in” in front of the Justice Center at SW 2nd and Main. Officers proceeded to surround the demonstrators on all four sides and detained those within the containment for about one hour. Ten people were arrested but ultimately were not charged by the District Attorney. The District Attorney’s Office later cited the lack of documentation in police reports of specific criminal acts committed by those arrested for its inability to prosecute.

The Kettle/box-in is controversial among activists for a number of reasons. One concern is the possible detention of bystanders not involved in any disruptive or illegal activity. There is also disagreement between those who believe that police use of a kettle/box-in de-escalates a potentially violent situation and those who feel it exacerbates feelings of discontent in an already tense environment.

A former Police Bureau incident commander indicated a box-in is often difficult to execute because of its complexity and timing adding that, “If you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.”

The June 4 mass detention, unlike the November 2014 incident, did not have officers surrounding protestors on all sides. The built environment of downtown Portland aided the officers in containing the marchers. Those detained at SW Fourth and Morrison had officers to the north and south, with buildings confining the group’s movement to the east and west. Eventually additional officers responded to assist with the detention.

The Vancouver (B.C) Police Department indicated it does not use this type of containment even though it is allowed by Canadian courts because of the large number of officers required and human rights considerations.
A law professor interviewed during an investigation of the 2014 mass detention and arrest, referenced the US Supreme Court case *Terry v. Ohio* and indicated police would require reasonable suspicion to stop a large group of people, which would be “very fact and context specific.” The professor indicated the “the tighter the connection among the people, the better the case” for police being justified in a mass detention, whereas their justification would be weakened with “the more people there are and the fewer perpetrators and the less connections there are between them.” The professor indicated officers may utilize their discretion to arrest a certain number of protesters who committed a crime and let other protesters go for the same crime due to limited resources.

A Willamette University professor that IPR interviewed indicated public safety would take precedence during a protest, and stated officers would have to make a “split-second” decision whether to detain a large group of people. The professor stated if officers “think a group is being threatening, then they can either hold them or ask them to disperse.” The professor indicated community members may not agree with the decisions officers make, and noted there is “tension between liberty and security.”

Community members were concerned that there was no reasonable suspicion for all the persons detained on June 4. The ACLU of Oregon had a legal observer who was present at Chapman Square and ACLU legal director indicated there was “no way” that “ninety-nine percent of those people could be suspected of a crime.” An ACLU staff attorney said that by blocking off an entire city block in the middle of the day while businesses were open, police were bound to catch innocent people in the kettle.

Those detained at SW 4th and Morrison were held for further investigation of violation of Disorderly Conduct (ORS 166.025, Class B misdemeanor), a review of the police
reports and video provided by the Police Bureau finds little documentation of crowd behavior that articulates the reasonable suspicion had by officers prior to the detention of the marchers. No witnesses were interviewed regarding the actions of the marchers prior to their detention. While video taken by police and civilians during the early moments of the detention show a large group of marchers in the street and sidewalk on SW 4th Avenue, there were no police videos or reports reviewed by IPR showing vehicles or pedestrians obstructed by the marchers or any of the other elements required by the disorderly conduct statute.

While police reports document the processing of individuals detained and the forms of identification provided officers, there appears to have been no questioning of the detained marchers regarding disorderly conduct.

**Need for Police Bureau Policy for Mass Detention and Arrests**

Any inquiry into the action of Police Bureau members begins with a review of the applicable policy. In this case, IPR’s efforts are complicated by the Police Bureau’s lack of a written policy governing stops and temporary detentions. Additionally, the Police Bureau lacks a written policy on mass detentions and arrests. IPR recommends that the Police Bureau prohibit use of mass detention or arrests absent a compelling government interest.

All Police Bureau officers receive training on applicable constitutional principles and relevant legal cases. Additionally, Police Bureau directives require all officers follow the U.S. and Oregon Constitutions and all applicable laws. The lack of a Police Bureau policy regarding mass detentions and arrests presents an area of risk for the City. A well-reasoned mass detention and arrest policy will allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on policy.

The lack of a written policy regarding mass detention and arrests additionally deprives the Police Bureau of the opportunity of crafting a policy that addresses legitimate public safety goals in consultation with the community. The policy creation process is designed to allow the public better understanding of police goals. Any mass detention or arrest of demonstrators in Portland will be highly controversial, especially if it involves a tactic seen as punitive by certain segments of the population. Constitutional protections and community concerns will have to be weighed against the governmental interests the Police Bureau seeks to advance by a mass detention or arrest.

Any credible mass detention and arrest policy would need to provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible and what types of warning would need to be provided to demonstrators. The policy will also have to consider the length of detention and if weather conditions suitable for holding a large group outside. The policy would also have to determine the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water, and restrooms.

Additionally, whenever there is a mass detention or arrest at a crowd control event, the mass detention or arrest should be reviewed during the after-action review of the event for proper application of policy and lessons learned.
Recommendations:

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

5. The Police Bureau should amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers are allowed to engage in mass detentions and arrests.

6. When the Police Bureau has engaged in a mass detention or arrest during a crowd control event, the after action review of the event should determine whether the mass detention or arrest was appropriately ordered and implemented.

Absent Exigent Circumstances Media or Legal Observers Should Not be Detained

Currently, Directive 635.10(Crowd Control) prohibits the arrest of media and legal observers:

*Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and may be subject to arrest for failure to do so.*

There is no indication that the media representatives detained on June 4, 2017, had an opportunity to comply with police requests prior to being detained. The events of June 4, were of broad community and even national interest, given the large number of confrontations between members of the alt-right and Antifa. The detention of so many members of the media raised community concerns.

Recommendation:

7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

Police Documentation of Mass Events

The Police Bureau has improved and expanded its efforts at videotaping its crowd control activities in recent years. Despite the improvement, there remain gaps in video collected due to the limited number and vantage point provided by Police Bureau videographers who are usually Forensic Evidence Division criminalists. Video is often taken from behind police lines. During larger, quick moving events, Police Bureau videographers may not be in a proper position to...
record events that may be of interest to criminal or administrative investigators.

In the event After Action Report, the Chief’s Office recommended that some Rapid Response Team officers be equipped with GoPro cameras to allow for an expansion of video recording efforts. We would echo that suggestion and recommend that in addition to video from individual Rapid Response Team squads there should be video that captures interactions between officers and demonstrators from a distance that captures larger group dynamics.

Currently, Police Bureau crowd control video does not identify the time and date taken or the videographer. We would recommend that that Police Bureau video of crowd control events include date and time stamps and videographer on the video.

The Police Bureau utilizes an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, subsequent reviewers or investigators of crowd control incidents are deprived of a critical contemporaneous record. The Police Bureau currently uses a scribe in the Emergency Operation Center to document important events during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies such as the Oakland Police Department have policies that require all radio transmissions of crowd control events be preserved.

Recommendations:

8. The Police Bureau should expand its use of video recording capabilities at crowd control events, including deploying body worn cameras with Rapid Response Team officers.

9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer’s name.

10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

Police Photographing Detained Individuals

Rapid Response Team officers did not release those detained at SW 4th and Morrison until they were photographed next to their identification. Individuals wearing masks or disguises to protect their identity were directed to remove them prior to being released. Police Bureau command staff interviewed by IPR indicated this was part of an investigation into the attempted assault on officers with bricks and other objects. The photographing of the detained individuals and their identification quickly became controversial in some segments of the community.

Chief Marshman said in a June 6, Oregon Public Broadcasting interview that he was unaware of the Police Bureau photographing the identification of detained individuals on June 4 and wondered if one of the Bureau’s partner agencies was responsible, as it was not PPB’s practice to do so. A Police Bureau spokesman later clarified that it had been Bureau personnel who had taken
Many community members contacted IPR with their concern over not knowing if the Police
Bureau had retained or shared the photographs and data with other law enforcement agencies.
An additional concern voiced by some was a fear that the photographing of individuals and their
identification constituted a form of intelligence gathering by the Police Bureau or that the photos
would be shared with outside law enforcement agencies, particularly federal agencies. The Police
Bureau stated photographing detained persons and their identification was part of its
investigation into disorderly conduct and other crimes that occurred on June 4.

When interviewed by IPR, the ACLU legal director stated his belief that photographing the
identification of the detained individuals was a violation of a protester’s Fourth Amendment
rights, as the taking of the photographs constituted a seizure in which there was no way to prove
“individualized reasonable suspicion.” The legal director described the situation as a surveillance
scheme inconsistent with the protections afforded under the constitution and indicated the police
violated Oregon State Law (ORS 181.575) which prohibits the collection and creation of files based
on people’s political affiliation.

Other police oversight agencies in number of cities contacted by IPR such as Washington, DC and
Berkeley, CA were not familiar with this tactic despite those cities frequency of protests. Seattle
Police said that they do photograph protesters as part of the arrest process but added that they
have a very strong ordinance that prevents them from photographing crowds until crimes are
committed.

The Willamette University professor indicated she had not heard of any protesters previously
being photographed by police for disorderly conduct. However, the professor indicated the US
Supreme Court Case Hiibel v. Sixth Judicial District Court of Nevada ruled that people must submit
identification to police when questioned, an act which would not elevate the stop to an arrest.
The professor explained the Supreme Court ruling meant “we live in a society where you have to
give your identification for everything.” She indicated a protester could seek damages if police
inappropriately entered their information into a photo database.

Neither members of the community or Police Bureau that IPR contacted during this review were
aware of prior instances of Bureau members photographing detained individuals during a mass
detention. There is currently no Police Bureau Directive that provides guidance for photographing
individuals during a mass detention. This, in part, may explain Chief Marshman’s initial statement.
In a June 21 memo, Chief Marshman wrote to Mayor Wheeler that the photographs taken during
the mass detention were uploaded to the Police Bureau’s Digital Image Management
System(DIMS). Chief Marshman also wrote, “(a)ny photographs not used in a criminal
investigation will be purged pursuant to PPB policy.” During this review, IPR inquired whether the
Police Bureau still had the photos of the detained individuals and their identification in its
possession. The Police Bureau told IPR all photos taken by police personnel on June 4 were still in
DIMS and would be retained permanently by the Police Bureau unless they were explicitly ordered
to be removed. Additionally, the photos are subject to a legal hold, which prohibits their
destruction, due to the pending ACLU lawsuit. The Bureau currently does not have a retention
policy for data entered into DIMS allowing for photos to be held indefinitely until staff are told to
delete them.
Detained Individuals Should Not Be Photographed Absent a Written Policy

The Police Bureau should recognize that segments of the community do not trust the Police Bureau or the City due to (now prohibited) practices from previous decades such as the gathering of intelligence on political activists, including photographing, covert surveillance, and keeping files on certain individuals and political organizations. Without clear policies around the use of photographs of detained persons and the retention of records, members of the public may believe they are being targeted for their political beliefs or that their information is being shared with other law enforcement agencies.

It is important that a written policy reflect our shared values under the First and Fourth amendments as well as under the Oregon Constitution. This review found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, yet it is important that the Police Bureau consider that its actions may be perceived as an attempt to chill free speech and dissenting voices. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Bureau personnel and whether they were within existing policy.

Recommendation:

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will have access to photos,
   - whether they will be shared with other law enforcement agencies, and
   - a deadline after which the photographs must be purged if there are no criminal charges.

Intergovernmental Agreements

Clear policies explaining permissible crowd control tactics will also make it easier to coordinate with outside tactics. Although intergovernmental agreements are reviewed annually, the agreements the Police Bureau has with other local law enforcement agencies date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with other agencies’ directives when participating in events in other jurisdictions. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive, but is not included in the agreements between agencies. Such language will become more important as the Portland Police Bureau’s directives, particularly use of force, are updated to be more restrictive than those used by outside agencies.

There was some community concern expressed that the City would utilize outside agencies with less stringent use of force policies in an attempt to avoid the Police Bureau’s increasingly restrictive policies. IPR found no evidence that this has occurred, but this issue was raised multiple times by community members.
Finally, the intergovernmental agreements are silent as to mandating cooperating outside agencies making their employees or documents available to Portland during administrative investigations of alleged misconduct by City employees.

Recommendations:

12. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Recommendations

Crowd control events present unique challenges for police officers on the ground and for police agencies when writing policy and outlining the tactics available to units groups like the Rapid Response Team. When tensions between groups are as high as they were on June 4th, the police must balance public safety concerns and be prepared. In reviewing the practices of a number of police departments, the Police Bureau's goal of keeping antagonistic groups separate and confiscating weapons appear to be best practices for these types of events in other jurisdictions.

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau's best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about which tactics will or will not be used and why. A sound truck loudspeaker in the midst of a protest is not the ideal way for the Bureau to explain its justification to the public.

1. For larger crowd control events, the Police Bureau should create a website for it to better communicate with the public.

2. The Police Bureau should create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon.

3. The Police Bureau should create a written policy that provides guidance to its members on how they should conduct stops and other forms of temporary detention.

4. The Police Bureau should not utilize mass detentions or arrests absent a compelling governmental interest.

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7. The Police Bureau should amend Directive 635.10 to include a general prohibition on the detention of media and legal observers.

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9. Video footage taken at crowd control events by Police Bureau personnel should be time and date stamped with videographer's name.
10. The Police Bureau should preserve and archive audio transmissions between officers during crowd control events.

11. The Police Bureau should not photograph individuals detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will have access to photos,
   • whether they will be shared with other law enforcement agencies, and
   • a deadline after which the photographs must be purged if there are no criminal charges.

12. Update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s Use of Force policies.

13. Intergovernmental agreements should be updated to require outside agencies cooperate with the City’s administrative investigation process.
Policy Review:
Portland Police Bureau can improve its approach to crowd control during street protests

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Summary

Following the 2016 Presidential election, Portland saw an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted attention from counter-protestors and law enforcement.

In the weeks leading up to the rally, Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national media organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members objected to what they described as the Police Bureau’s unequal treatment of the various groups of protesters and the lack of legal justification for detaining people. The Independent Police Review (IPR) found insufficient documentation by the Police Bureau of the legal justification had by the officers for the mass detention.

The Police Bureau also photographed individuals during the mass detention without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address fear among some in the community that the tactic will be used to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides the opportunity for dialogue between community members and the Police Bureau about appropriate police tactics and behavior at protests that could lead to arrests.
Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day were marked by multiple confrontations between police and protesters. Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood in East Portland. Counter-protestors confronted the Patriot Prayer group, including members of Rose City Antifa, an anti-fascist group, as it marched down Southeast 82nd Avenue. Police arrested three counter-protestors during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train. The men intervened when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence as had happened in other cities. The Police Bureau decided it would deploy its Rapid Response Team and issued a press release noting the potential for violence:

There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons
attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

Rapid Response Team focuses on large events

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly sent to large events, including protests. Officers volunteer for the team, are screened, and receive additional training in crowd control tactics while maintaining a regular duty assignment.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets. In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to help during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

The Police Bureau also uses Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. These officers receive some additional training in crowd control, but not as much or as frequently as Rapid Response Team members. These officers assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were present at the June 4 rally. Two squads of the Oregon State Police and a squad from the Multnomah County Sheriff’s Office were part of the police presence.
Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those protesting the Patriot Prayer Rally. The largest group of counter-protestors, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Officers seized property and eventually cleared Chapman Square

Tension among groups in Chapman Square and Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Schrunk Plaza to separate the opposing demonstrators. Two squads from the Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south toward Schrunk Plaza.
During the rally, individuals in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. Some people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects and to move to the north out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.

**Police detained nearly 400 people at Southwest 4th and Morrison**

At 4:21 pm, Police Bureau officers and Oregon State Police detained counter-protesters who had moved north from Chapman Square to Southwest 4th Avenue between Morrison and Alder Streets.

A squad of state troopers moved in front of the marchers at Southwest Alder Street and prevented them from continuing north on 4th Avenue, while a Police Bureau Rapid...
Response Team squad blocked Southwest Morrison Street. The Incident Commander ordered that the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR’s review of police reports filed by Field Arrest Teams showed the Police Bureau photographed 389 people.

The Police Bureau used a sound truck to deliver warnings to the group, including two announcements that members would be detained for the investigation of disorderly conduct and that police would be making arrests based on probable cause. Subsequent messages from the sound truck specified that those detained should show their identification. Those without identification were required to provide contact information. Officers warned that once people were released, they should leave or face arrest. There is no record of a dispersal order or a warning being given at Southwest 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.”

Several journalists were detained along with protestors, representing the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed similar to the protesters, required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of the intersection of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them, but none were charged with a crime.

During the mass detention, Federal Protective Services officers closed Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza, where police broke up scuffles among various groups of protesters as people left the area.
Community members objected to treatment by police

Twenty-seven community members filed complaints with IPR related to the June 4 protest. Their objections fell into three broad areas:

1. Perceptions that police favored one group over another;
2. Use of a detention tactic that swept up innocent bystanders; and,
3. Forcing people who were detained to be photographed holding their identification without evidence they had engaged in criminal activity.

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. Patriot Prayer representatives assured the sergeant their participants would not bring firearms.

The sergeant also attempted to contact representatives of Rose City Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and express their concerns verbally, not physically.

During the event, the sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages. When the sergeant texted counter-protest organizers in Chapman Square to call attention to people throwing bricks and water bottles at police, the organizers denied it.

Several community members perceived disparities in how the Police Bureau treated the different groups, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were...
removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. A lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently because Rose City Antifa lacked a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney observed police take “poles from signs” from the protesters in Chapman Square, while the those at the rally in Schrunk Plaza had “giant flag poles.”

This variation could be attributed to differences in federal and local policies regarding the seizure of property. Police reports show that the Police Bureau confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Federal Protective Police checked bags and individuals as they entered Schrunk Plaza. Portland Police worked outside Schrunk Plaza, so officers mostly seized property from counter-protestors in and around Chapman Square.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Police Bureau Directive 660.10 (Property and Evidence Procedure) also allows police to preemptively take custody of property that may be used in the commission of a crime.

After-action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were photographed and displayed on the Police Bureau’s Twitter feed.

Additionally, there were weapons left by some individuals detained at Southwest 4th and Morrison.

Community members objected to mass detention

In the days following the June 4 protest, community members reported that the Police Bureau had “kettled” protesters at Southwest 4th Avenue and Morrison Street. Kettle is a term often used to describe the crowd-control tactic when officers surround a group and control access in and out of the area. The Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

The kettle/box-in is disliked by some community members for several reasons. One concern is that

<table>
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<td>Kettle derives from the German word Kessel, which translates as either kettle or cauldron. A kettle also describes a military tactic, where a large force will surround an opposing force, separating it from external support and the surrounded force is eventually made ineffective.</td>
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bystanders not involved in disruptive or illegal activity may be unfairly detained. An additional worry is that having a large number of officers surrounding and detaining protestors may have a chilling effect on free speech.

Law enforcement officials point to the box-in as an effective tactic but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “(i)f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Police Bureau command staff said that the use of the box-in deescalates potentially violent situations without police use of force. The Vancouver, British Columbia, Police Department said it does not use this type of containment because of the number of officers required and human rights considerations.

**Reasonable suspicion of disorderly conduct not documented**

Courts allow police to temporarily detain or stop an individual if there is reasonable suspicion that the person was involved in a crime. IPR found little documentation by the Police Bureau describing the evidence supporting officers’ reasonable suspicion of disorderly conduct prior to the mass detention. Police reports indicated that those detained were not questioned about disorderly conduct prior to their release. Some community members said they were not told why they were detained.

Police records show those detained were held for further investigation of disorderly conduct, which is a misdemeanor. Officers did not interview independent witnesses about the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing that marchers obstructed vehicles or pedestrians or any of the other elements required by the disorderly conduct statute.

Police reports documented the individuals detained and the forms of identification they provided, but no statements indicating they engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify and process individuals who were detained, not question them.

**Community members feared police would misuse personal information collected at the protest**

On June 4, the Police Bureau individually photographed 389 people and their identification before allowing them to leave the mass detention area. Officers directed individuals wearing masks or disguises to protect their identity to remove them prior to being released.

In complaints filed with IPR, community members feared the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned
whether photographing people and their identification constituted a form of intelligence gathering by the Police Bureau.

The ACLU contends photographing individuals with their identification during a protest was a violation of their Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on a person’s political affiliation.

Police accountability agencies in Washington, D.C. and Berkeley, Calif., said their departments do not use this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but a local ordinance prevents officers from photographing people unless crimes have been committed.

The Police Bureau has no policy to guide if photographs should be taken at large events and how they may be later used, shared, or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau has no ability to address community concerns that the photographs and identification will not be misused to chill free speech and dissenting voices.

Police Bureau command staff defended the tactic, saying it was part of an investigation into the attempted assault on officers with bricks and other objects.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware that photos were taken of people and their identification on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not the Bureau’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

In a June 21 memo to Mayor Wheeler, Chief Marshman wrote that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR learned the Police Bureau still had the photos of the individuals and their identification in its possession. The Police Bureau does not have a retention policy for digital image data, allowing for photos to be held permanently until staff are told to delete them. The Police Bureau said the photographs would be retained indefinitely unless they were explicitly ordered to be removed. Now they are subject to a legal hold in response to a lawsuit, which prohibits their destruction.

Policy Conclusions

Better communication during planning would help public understand expectations during events

While the Police Bureau prudently attempted to contact participants prior to the rally, the
Special Events sergeant was unable to fully communicate with Rose City Antifa prior to June 4, because it did not have the leadership and organizational structure of the other groups. While this presented a challenge, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement.

Some community members said that they were unaware of the Police Bureau’s authority or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases but should have a comprehensive, transparent communication plan for specific events to add clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and City Code authority, as well as descriptions of methods used to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor in real-time. These communication strategies should not require participants to interact with an officer to get information.

**Police Bureau needs policies to govern mass detentions and arrests**

Any inquiry into the action of Police Bureau members normally begins with a review of the applicable policy. Currently, the Police Bureau has no written policy governing stops or other forms of temporary detention, including mass detentions. The Police Bureau also does not have a mass arrest policy.

The absence of a policy that addresses mass detentions and arrests presents risk for the City. A well-reasoned policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on the policy. It would provide the opportunity to craft a document that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could be weighed against the governmental interests the Police Bureau seeks to advance when it uses mass detention or arrest during protests.

A mass detention and arrest policy should:
- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
• describe the types of warnings that need to be provided to demonstrators prior to detention;
• include a general prohibition on the detention of media and legal observers;
• consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
• articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Better recorded evidence would benefit post-event investigations and reviews

The Police Bureau often documents mass events through videos to record officers’ actions and aid in criminal prosecutions. It has improved and expanded its video-taping capacity during crowd control activities in recent years, but gaps remain because of the limited number of cameras and vantage points provided by Police Bureau videographers.

Video is often taken by Forensic Evidence Division criminalists from behind police lines. During larger, quickly moving events, videographers may not be well-positioned to record events of value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document incidents during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

Intergovernmental agreements need to be updated

Although intergovernmental agreements between the Police Bureau and other agencies may be reviewed annually, they date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in large events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive but is not included in the agreements among agencies. Such language will become more important as the Police Bureau’s directives, particularly those governing use-of-force, are updated to be more restrictive than those used by partner agencies.

The agreements also do not require other agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.
Recommendations

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   • create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   • have a transparent and comprehensive strategy to better communicate with the public prior to and during large crowd control events;
   • update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s use-of-force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. To address issues with mass detentions and arrests the Police Bureau should:
   • create a written policy that governs all stops and other forms of temporary detention;
   • not use mass detentions or arrests absent a compelling governmental interest;
   • amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   • determine in the after-action review whether a mass detention or arrest was appropriately ordered and implemented.

3. To better document crowd control events, Police Bureau personnel should:
   • make use of Go-Pro cameras on individual officers and position other cameras from a distance to capture group dynamics;
   • time and date stamp all video footage with videographer’s name;
   • attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   • preserve and archive audio transmissions between officers during crowd control events; and
   • create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

4. The Police Bureau should not photograph individuals who have been detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   • who within the Police Bureau will be authorized to access the photos;
   • whether they will be shared with other law enforcement agencies; and
   • a deadline after which the photographs must be purged if there are no criminal charges.
Methodology

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Some members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver, British Columbia, Police Department.
Policy Review:
Portland Police Bureau can improve its approach to crowd control during street protests

May 2018
Mary Hull Caballero
City Auditor
Constantin Severe
Director
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Summary

Following the 2016 Presidential election, Portland saw an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted attention from counter-protestors and law enforcement.

In the weeks leading up to the rally, Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national media organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members objected to what they described as the Police Bureau’s unequal treatment of the various groups of protesters and the lack of legal justification for detaining people. The Independent Police Review (IPR) found insufficient documentation by the Police Bureau of the legal justification had by the officers for the mass detention.

The Police Bureau also photographed individuals during the mass detention without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address fear among some in the community that the tactic will be used to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides the opportunity for dialogue between community members and the Police Bureau about appropriate police tactics and behavior at protests that could lead to arrests.
Events Leading Up to and Including June 4 Protest

Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day were marked by multiple confrontations between police and protesters. Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood in East Portland. Counter-protestors confronted the Patriot Prayer group, including members of Rose City Antifa, an anti-fascist group, as it marched down Southeast 82nd Avenue. Police arrested three counter-protestors during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train. The men intervened when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence as had happened in other cities. The Police Bureau decided it would deploy its Rapid Response Team and issued a press release noting the potential for violence:

There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons...
attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

**Rapid Response Team focuses on large events**

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly sent to large events, including protests. Officers volunteer for the team, are screened, and receive additional training in crowd control tactics while maintaining a regular duty assignment.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets. In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to help during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.

The Police Bureau also uses Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. Members of the Mobile Field Force, typically on-duty patrol officers, assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were present at the June 4 rally. Two squads of the Oregon State Police and a squad from the Multnomah County Sheriff’s Office were part of the police presence.
Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those protesting the Patriot Prayer Rally. The largest group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.

Officers seized property and eventually cleared Chapman Square

Tension among groups in Chapman Square and Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Schrunk Plaza to separate the opposing demonstrators. Two squads from the Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south toward Schrunk Plaza.
During the rally, individuals in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. Some people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects and to move to the north out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.

**Police detained nearly 400 people at Southwest 4th and Morrison**

At 4:21 pm, Police Bureau officers and Oregon State Police detained counter-protesters who had moved north from Chapman Square to Southwest 4th Avenue between Morrison and Alder Streets.

A squad of state troopers moved in front of the marchers at Southwest Alder Street and prevented them from continuing north on 4th Avenue, while a Police Bureau Rapid
Response Team squad blocked Southwest Morrison Street. The Incident Commander ordered that the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney's Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR’s review of police reports filed by Field Arrest Teams showed the Police Bureau photographed 389 people.

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While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.”

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The only reported use of force during the mass detention occurred at the northeast corner of the intersection of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them, but none were charged with a crime.

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Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Police Bureau Directive 660.10 (Property and Evidence Procedure) also allows police to preemptively take custody of property that may be used in the commission of a crime.

After-action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were photographed and displayed on the Police Bureau’s Twitter feed.

Additionally, there were weapons left by some individuals detained at Southwest 4th and Morrison.

Community members objected to mass detention

In the days following the June 4 protest, community members reported that the Police Bureau had “kettled” protesters at Southwest 4th Avenue and Morrison Street. Kettle is a term often used to describe the crowd-control tactic when officers surround a group and control access in and out of the area. The Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

The kettle/box-in is disliked by some community members for several reasons. One concern is that

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bystanders not involved in disruptive or illegal activity may be unfairly detained. An additional worry is that having a large number of officers surrounding and detaining protestors may have a chilling effect on free speech.

Law enforcement officials point to the box-in as an effective tactic but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “(i)f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Police Bureau command staff said that the use of the box-in deescalates potentially violent situations without police use of force. The Vancouver, British Columbia, Police Department said it does not use this type of containment because of the number of officers required and human rights considerations.

**Reasonable suspicion of disorderly conduct not documented**

Courts allow police to temporarily detain or stop an individual if there is reasonable suspicion that the person was involved in a crime. IPR found little documentation by the Police Bureau describing the evidence supporting officers’ reasonable suspicion of disorderly conduct prior to the mass detention. Police reports indicated that those detained were not questioned about disorderly conduct prior to their release. Some community members said they were not told why they were detained.

Police records show those detained were held for further investigation of disorderly conduct, which is a misdemeanor. Officers did not interview independent witnesses about the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing that marchers obstructed vehicles or pedestrians or any of the other elements required by the disorderly conduct statute.

Police reports documented the individuals detained and the forms of identification they provided, but no statements indicating they engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify and process individuals who were detained, not question them.

**Community members feared police would misuse personal information collected at the protest**

On June 4, the Police Bureau individually photographed 389 people and their identification before allowing them to leave the mass detention area. Officers directed individuals wearing masks or disguises to protect their identity to remove them prior to being released.

In complaints filed with IPR, community members feared the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned...
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Police accountability agencies in Washington, D.C. and Berkeley, Calif., said their departments do not use this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but a local ordinance prevents officers from photographing people unless crimes have been committed.

The Police Bureau has no policy to guide if photographs should be taken at large events and how they may be later used, shared, or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau has no ability to address community concerns that the photographs and identification will not be misused to chill free speech and dissenting voices.

Police Bureau command staff defended the tactic, saying it was part of an investigation into the attempted assault on officers with bricks and other objects.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware that photos were taken of people and their identification on June 4 and wondered if one of the Police Bureau’s partner agencies was responsible, as it was not the Bureau’s practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

In a June 21 memo to Mayor Wheeler, Chief Marshman wrote that the photographs taken during the mass detention were uploaded to the Police Bureau’s Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR learned the Police Bureau still had the photos of the individuals and their identification in its possession. The Police Bureau does not have a retention policy for digital image data, allowing for photos to be held permanently until staff are told to delete them. The Police Bureau said the photographs would be retained indefinitely unless they were explicitly ordered to be removed. Now they are subject to a legal hold in response to a lawsuit, which prohibits their destruction.

**Policy Conclusions**

**Better communication during planning would help public understand expectations during events**

While the Police Bureau prudently attempted to contact participants prior to the rally, the
June 2017 Protest Policy Review

Special Events sergeant was unable to fully communicate with Rose City Antifa prior to June 4, because it did not have the leadership and organizational structure of the other groups. While this presented a challenge, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement.

Some community members said that they were unaware of the Police Bureau’s authority or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases but should have a comprehensive, transparent communication plan for specific events to add clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and City Code authority, as well as descriptions of methods used to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor in real-time. These communication strategies should not require participants to interact with an officer to get information.

**Police Bureau needs policies to govern mass detentions and arrests**

Any inquiry into the action of Police Bureau members normally begins with a review of the applicable policy. Currently, the Police Bureau has no written policy governing stops or other forms of temporary detention, including mass detentions. The Police Bureau also does not have a mass arrest policy.

The absence of a policy that addresses mass detentions and arrests presents risk for the City. A well-reasoned policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on the policy. It would provide the opportunity to craft a document that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could be weighed against the governmental interests the Police Bureau seeks to advance when it uses mass detention or arrest during protests.

A mass detention and arrest policy should:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
describe the types of warnings that need to be provided to demonstrators prior to detention;

• include a general prohibition on the detention of media and legal observers;

• consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and

• articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

Better recorded evidence would benefit post-event investigations and reviews

The Police Bureau often documents mass events through videos to record officers’ actions and aid in criminal prosecutions. It has improved and expanded its video-taping capacity during crowd control activities in recent years, but gaps remain because of the limited number of cameras and vantage points provided by Police Bureau videographers.

Video is often taken by Forensic Evidence Division criminalists from behind police lines. During larger, quickly moving events, videographers may not be well-positioned to record events of value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document incidents during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

Intergovernmental agreements need to be updated

Although intergovernmental agreements between the Police Bureau and other agencies may be reviewed annually, they date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in large events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive but is not included in the agreements among agencies. Such language will become more important as the Police Bureau’s directives, particularly those governing use-of-force, are updated to be more restrictive than those used by partner agencies.

The agreements also do not require other agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.
Recommendations

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   - create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
   - have a transparent and comprehensive strategy to better communicate with the public prior to and during large crowd control events;
   - update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s use-of-force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. To address issues with mass detentions and arrests the Police Bureau should:
   - create a written policy that governs all stops and other forms of temporary detention;
   - not use mass detentions or arrests absent a compelling governmental interest;
   - amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   - determine in the after-action review whether a mass detention or arrest was appropriately ordered and implemented.

3. To better document crowd control events, Police Bureau personnel should:
   - make use of Go-Pro cameras on individual officers and position other cameras from a distance to capture group dynamics;
   - time and date stamp all video footage with videographer’s name;
   - attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   - preserve and archive audio transmissions between officers during crowd control events; and
   - create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

4. The Police Bureau should not photograph individuals who have been detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will be authorized to access the photos;
   - whether they will be shared with other law enforcement agencies; and
   - a deadline after which the photographs must be purged if there are no criminal charges.
**Methodology**

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau polices and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Some members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver, British Columbia, Police Department.
POLICY REVIEW:
Portland Police Bureau can improve its approach to crowd control during street protests

May 2018
Mary Hull Caballero, City Auditor
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Cover Photo
David Nguyen
SUMMARY

Following the 2016 Presidential election, Portland saw an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted attention from counter-protestors and law enforcement.

In the weeks leading up to the rally, Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schrunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national media organizations who were not allowed to leave until they and their identification were individually photographed by police.

Community members objected to what they described as the Police Bureau’s unequal treatment of the various groups of protesters and the lack of legal justification for detaining people. The Independent Police Review (IPR) found insufficient documentation by the Police Bureau of the legal justification had by the officers for the mass detention.

The Police Bureau also photographed individuals during the mass detention without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address fear among some in the community that the tactic will be used to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides the opportunity for dialogue between community members and the Police Bureau about appropriate police tactics and behavior at protests that could lead to arrests.
EVENTS LEADING UP TO AND INCLUDING JUNE 4 PROTEST

Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau’s response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President’s Day and May Day were marked by multiple confrontations between police and protesters. Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a “March for Free Speech” rally in the Montavilla neighborhood in East Portland. Counter-protestors confronted the Patriot Prayer group, including members of Rose City Antifa, an anti-fascist group, as it marched down Southeast 82nd Avenue. Police arrested three counter-protestors during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train. The men intervened when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its “Free Speech Rally” scheduled for June 4 at Terry Schrunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian’s association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schrunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.
Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence as had happened in other cities. The Police Bureau decided it would deploy its Rapid Response Team and issued a press release noting the potential for violence:

There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.

Rapid Response Team focuses on large events

The Police Bureau’s Rapid Response Team, formed in 2001, is the unit most regularly sent to large events, including protests. Officers volunteer for the team, are screened, and receive additional training in crowd control tactics while maintaining a regular duty assignment.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.

In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff’s Office and Washington County Sheriff’s Office. Outside agencies agree to help during a “major incident, natural disaster, or extreme civil disorder.” Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.
The Police Bureau also uses Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. Members of the Mobile Field Force, typically on-duty patrol officers, assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were present at the June 4 rally. Two squads of the Oregon State Police and a squad from the Multnomah County Sheriff’s Office were part of the police presence.

### Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schrunk Plaza, Chapman Square, and Lownsdale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schrunk Plaza, which is owned and administered by the federal government.

There were three locations for those protesting the Patriot Prayer Rally. The largest group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schrunk Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn’t agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.
Officers seized property and eventually cleared Chapman Square

Tension among groups in Chapman Square and Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Schrunk Plaza to separate the opposing demonstrators. Two squads from the Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south toward Schrunk Plaza.

During the rally, individuals in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. Some people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects and to move to the north out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.
June 2017 Protest Policy Review

Police detained nearly 400 people at Southwest 4th and Morrison

At 4:21 pm, Police Bureau officers and Oregon State Police detained counter-protesters who had moved north from Chapman Square to Southwest 4th Avenue between Morrison and Alder Streets.

A squad of state troopers moved in front of the marchers at Southwest Alder Street and prevented them from continuing north on 4th Avenue, while a Police Bureau Rapid Response Team squad blocked Southwest Morrison Street. The Incident Commander ordered that the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention, the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney’s Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR’s review of police reports filed by Field Arrest Teams showed the Police Bureau photographed 389 people.

The Police Bureau used a sound truck to deliver warnings to the group, including two announcements that members would be detained for the investigation of disorderly conduct and that police would be making arrests based on probable cause. Subsequent messages from the sound truck specified that those detained should show their identification. Those without identification were required to provide contact information. Officers warned that once people were released, they should leave or face arrest. There is no record of a dispersal order or a warning being given at Southwest 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to “speed up the process.”
Several journalists were detained along with protestors, representing the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed similar to the protesters, required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of the intersection of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them, but none were charged with a crime.

During the mass detention, Federal Protective Services officers closed Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza, where police broke up scuffles among various groups of protesters as people left the area.

**COMMUNITY MEMBERS OBJECTED TO TREATMENT BY POLICE**

Twenty-seven community members filed complaints with IPR related to the June 4 protest. Their objections fell into three broad areas:

1. Perceptions that police favored one group over another;

2. Use of a detention tactic that swept up innocent bystanders; and,

3. Forcing people who were detained to be photographed holding their identification without evidence they had engaged in criminal activity.

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau’s responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. Patriot Prayer representatives assured the sergeant their participants would not bring firearms.
The sergeant also attempted to contact representatives of Rose City Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and express their concerns verbally, not physically.

During the event, the sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages. When the sergeant texted counter-protest organizers in Chapman Square to call attention to people throwing bricks and water bottles at police, the organizers denied it.

Several community members perceived disparities in how the Police Bureau treated the different groups, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. A lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently because Rose City Antifa lacked a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney observed police take “poles from signs” from the protesters in Chapman Square, while the those at the rally in Schrunk Plaza had “giant flag poles.”

This variation could be attributed to differences in federal and local policies regarding the seizure of property. Police reports show that the Police Bureau confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Federal Protective Police checked bags and individuals as they entered Schrunk Plaza. Portland Police worked outside Schrunk Plaza, so officers mostly seized property from counter-protestors in and around Chapman Square.
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Additionally, there were weapons left by some individuals detained at Southwest 4th and Morrison.

COMMUNITY MEMBERS OBJECTED TO MASS DETENTION

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The kettle/box-in is disliked by some community members for several reasons. One concern is that bystanders not involved in disruptive or illegal activity may be unfairly detained. An additional worry is that having a large number of officers surrounding and detaining protestors may have a chilling effect on free speech.

Law enforcement officials point to the box-in as an effective tactic but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “(i)f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Police Bureau command staff said that the use of the box-in deescalates potentially violent situations without police use of force. The Vancouver, British Columbia, Police Department said it does not use this type of containment because of the number of officers required and human rights considerations.
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Police records show those detained were held for further investigation of disorderly conduct, which is a misdemeanor. Officers did not interview independent witnesses about the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing that marchers obstructed vehicles or pedestrians or any of the other elements required by the disorderly conduct statute.

Police reports documented the individuals detained and the forms of identification they provided, but no statements indicating they engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify and process individuals who were detained, not question them.

COMMUNITY MEMBERS FEARED POLICE WOULD MISUSE PERSONAL INFORMATION COLLECTED AT THE PROTEST

On June 4, the Police Bureau individually photographed 389 people and their identification before allowing them to leave the mass detention area. Officers directed individuals wearing masks or disguises to protect their identity to remove them prior to being released.

In complaints filed with IPR, community members feared the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether photographing people and their identification constituted a form of intelligence gathering by the Police Bureau.

The ACLU contends photographing individuals with their identification during a protest was a violation of their Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on a person’s political affiliation.

Police accountability agencies in Washington, D.C. and Berkeley, Calif., said their departments do not use this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but a local ordinance prevents officers from photographing people unless crimes have been committed.

The Police Bureau has no policy to guide if photographs should be taken at large events and how they may be later used, shared, or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau has no ability to address community concerns that the photographs and identification will not be misused to chill free speech and dissenting voices.
Police Bureau command staff defended the tactic, saying it was part of an investigation into the attempted assault on officers with bricks and other objects.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware that photos were taken of people and their identification on June 4 and wondered if one of the Police Bureau's partner agencies was responsible, as it was not the Bureau's practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

In a June 21 memo to Mayor Wheeler, Chief Marshman wrote that the photographs taken during the mass detention were uploaded to the Police Bureau's Digital Image Management System. Chief Marshman also wrote, “(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy.”

During this review, IPR learned the Police Bureau still had the photos of the individuals and their identification in its possession. The Police Bureau does not have a retention policy for digital image data, allowing for photos to be held permanently until staff are told to delete them. The Police Bureau said the photographs would be retained indefinitely unless they were explicitly ordered to be removed. Now they are subject to a legal hold in response to a lawsuit, which prohibits their destruction.

**POLICY CONCLUSIONS**

**Better communication during planning would help public understand expectations during events**

While the Police Bureau prudently attempted to contact participants prior to the rally, the Special Events sergeant was unable to fully communicate with Rose City Antifa prior to June 4, because it did not have the leadership and organizational structure of the other groups. While this presented a challenge, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement.

Some community members said that they were unaware of the Police Bureau's authority or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases but should have a comprehensive, transparent communication plan for specific events to add clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and City Code authority, as well as descriptions of methods used to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor in real-time. These communication strategies should not require participants to interact with an officer to get information.
Police Bureau needs policies to govern mass detentions and arrests

Any inquiry into the action of Police Bureau members normally begins with a review of the applicable policy. Currently, the Police Bureau has no written policy governing stops or other forms of temporary detention, including mass detentions. The Police Bureau also does not have a mass arrest policy.

The absence of a policy that addresses mass detentions and arrests presents risk for the City. A well-reasoned policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on the policy. It would provide the opportunity to craft a document that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could be weighed against the governmental interests the Police Bureau seeks to advance when it uses mass detention or arrest during protests.

A mass detention and arrest policy should:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators prior to detention;
- include a general prohibition on the detention of media and legal observers;
- consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.
Better recorded evidence would benefit post-event investigations and reviews

The Police Bureau often documents mass events through videos to record officers’ actions and aid in criminal prosecutions. It has improved and expanded its video-taping capacity during crowd control activities in recent years, but gaps remain because of the limited number of cameras and vantage points provided by Police Bureau videographers.

Video is often taken by Forensic Evidence Division criminalists from behind police lines. During larger, quickly moving events, videographers may not be well-positioned to record events of value to criminal or administrative investigators. Better video collection will promote the community and City’s shared goal of greater accountability at crowd control events.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document incidents during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

Intergovernmental agreements need to be updated

Although intergovernmental agreements between the Police Bureau and other agencies may be reviewed annually, they date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies’ directives when participating in large events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau’s Crowd Control Directive but is not included in the agreements among agencies. Such language will become more important as the Police Bureau’s directives, particularly those governing use-of-force, are updated to be more restrictive than those used by partner agencies.

The agreements also do not require other agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.
RECOMMENDATIONS

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should:
   - create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to
     - provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to
       seize items that an officer may consider a dangerous or deadly weapon;
     - have a transparent and comprehensive strategy to better communicate with the public prior to and during large crowd control events;
     - update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau’s use-of-force policies during crowd control events and cooperate with the City’s administrative investigation process.

2. To address issues with mass detentions and arrests the Police Bureau should:
   - create a written policy that governs all stops and other forms of temporary detention;
   - not use mass detentions or arrests absent a compelling governmental interest;
   - amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
   - determine in the after-action review whether a mass detention or arrest was appropriately ordered and implemented.

3. To better document crowd control events, Police Bureau personnel should:
   - make use of Go-Pro cameras on individual officers and position other cameras from a distance to capture group dynamics;
   - time and date stamp all video footage with videographer’s name;
   - attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
   - preserve and archive audio transmissions between officers during crowd control events; and
   - create policies for audio and video recordings of crowd control events with clear use and retention guidelines.
4. The Police Bureau should not photograph individuals who have been detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
   - who within the Police Bureau will be authorized to access the photos;
   - whether they will be shared with other law enforcement agencies; and
   - a deadline after which the photographs must be purged if there are no criminal charges.

**METHODODOLOGY**

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned.

The objective of this review was to assess the Portland Police Bureau’s response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau policies and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Some members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.’s Office of Police Complaints, Berkeley’s Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver, British Columbia, Police Department.
Draft Response to IPR Crowd Control Recommendations

At the outset, it is important to note that the Police Bureau’s Crowd Management/Crowd Control Directive 635.10 has already been significantly revised since the incident discussed in this report. Subsequent to the June 4 protest, the Bureau, after significant consultation with political leaders, community members, and internal subject matter experts, released an amended version of Directive 635.10 in August 2017. In addition, the Bureau posted the Directive for additional public comment in March 2018. The Policy Development Team is currently working on additional revisions as we continue to improve and refine the policy.

Recommendation 1

A. Seizures of property are covered by Bureau Directive 650.00. The Bureau agrees that additional guidance on the temporary seizure of items that could be used as weapons would be beneficial. The Bureau has begun the process of revising Directive 650.00 by placing it up for the first universal review period on 5/15/18. The Bureau will complete its review and revisions, and the updated Directive will take effect by 10/1/18.

B. The Bureau believes that Procedure section 3 of the revised Directive 635.10 provides guidance to members and lays out an overall strategy of communication regarding crowd events. We will continue to evaluate ways to strengthen the policy during the current review process. The Bureau will also explore the possibility of developing an FAQ on its website related to crowd events.

C. Outside agencies who are called upon to assist with crowd events train extensively with PPB RRT. In addition, outside agency personnel are briefed for each event, and are expected to follow the guidelines established by the PPB Incident Commander for the situation. Unless there are extraordinary circumstances requiring an immediate response, outside agency personnel report to a centralized staging location, provide a list of their personnel to the Incident Commander, and are given a copy of the written Incident Action Plan. Supervisor for outside agency teams attend the Police Bureau’s supervisor briefing as well. As noted in Directive 635.10, section 7.1.3., members of outside agencies who respond to assist with crowd control events are subject to their own agencies’ rules and regulations. The Police Bureau does not have the authority to compel compliance with PPB directives by outside agency personnel.

Recommendation 2

A. The law surrounding stops and detentions is complex and frequently changing. As such, the Bureau provides extensive training to new officers on Fourth Amendment issues. In addition, ongoing training is provided to members via updates from the City Attorney’s
Office and other sources. Because the process to change Bureau directives is relatively slow moving, the Bureau believes the most effective way to ensure compliance with the law by members is via this training. Accountability for deviations from training and violations of rights can be achieved via enforcement of Directive 310.00 – Professional Conduct and Courtesy and Directive 315.00 – Laws, Rules, and Orders.

B. Revised Directive 635.10 section 12.3. makes it clear that arrests can only be carried out if there is individualized probable cause for each person. The Bureau agrees that mass detentions should only be carried out under extraordinary circumstances and at the direction of the Incident Commander. The Bureau is currently drafting language to address mass detentions in Directive 635.10. As noted above, Directive 635.10 is currently undergoing executive reconciliation as we evaluate feedback from members and community partners. A draft incorporating proposed changes should be posted for a second universal review period by July 2018. After additional consideration of feedback provided at that time, the Bureau hopes to enact a revised version of Directive 635.10 by October 2018.

C. As noted above, Directive 635.10 section 12.3. makes it clear that arrests can only be carried out if there is individualized probable cause. In addition, section 12.1. states that the Incident Commander is responsible for authorizing any arrests, including mass arrests. The Bureau will draft language to address the circumstances under which a mass detention may occur. Section 12.4. states that media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Likewise, media or legal observers will not be detained solely for their role in observing, capturing, and/or reporting on demonstrations or events. However, it is important to note that media or legal observers are required to obey all laws and follow all lawful orders.

D. The Bureau agrees that in the event of mass detentions or arrests, the after action review following that incident should include an evaluation of whether the mass detentions or arrests were properly ordered and implemented.

Recommendation 3

A. The Bureau already attempts to stream video from various locations in order to provide a complete picture of a crowd event. The Bureau continues to work on developing a body worn camera policy, but the surrounding issues are complex. Go Pro cameras would present many of the same challenges as body worn cameras, including retention, storage, and public records.

B. The Bureau keeps a record of which footage is recorded by which videographer. The Bureau will check with the Forensic Evidence Division to explore the feasibility of editing the date/time stamp to include the videographer’s name on the footage. The
Bureau agrees that video documentation of crowd events can be valuable in both criminal proceedings and administrative reviews of member actions. Forensic Evidence Division will have a response to the Chief’s Office on the feasibility of implementation by July 1, 2018.

C. The Bureau uses encrypted radio channels to conduct sensitive discussions regarding observed criminal behavior, the movement of personnel, and various other tactics. The Bureau believes the recording of these encrypted channels would be detrimental to the safety of both officers and the public.

D. Directive 635.10 section 4.3. provides extensive and detailed guidance on the use and retention of video evidence from crowd events. Although recordings for purposes of criminal prosecutions are strictly proscribed, the Bureau also has to balance the need to retain material for a window of time during which civil claims may be filed, as well as for use during internal administrative investigations.

Recommendation 4

The Bureau agrees that additional guidance should be provided regarding the photographing of individuals who are detained. The Policy Development Team will consult with the City Attorney’s Office for development of guidelines regarding use and retention of such photographs. The Policy Development Team will develop written guidance to be included in Directive 635.10 as it undergoes its current revisions. As noted above, these revisions should be completed, and a new version of the Directive enacted, by October 2018.