National
Policing
Institute

A STUDY OF BIAS IN THE WASHINGTON D.C. METROPOLITAN POLICE DEPARTMENT'S THREAT ASSESSMENT PROCESS

Prepared for:
The Office of Police Complaints Washington, D.C.

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EXECUTIVE SUMMARY

Background

In early 2021, the Council of the District of Columbia (the District), in collaboration with the Office of Police Complaints (OPC), provided written legislation, known as the Bias in Threat Assessments Evaluation Amendment Act of 2021, to investigate the Metropolitan Police Department (MPD) and the influence of bias in managing protests. While the act was not passed, it was introduced and then incorporated into the budget.[1] This provided the Office of Police Complaints (OPC) with oversight of the investigation. Because the budget did not go into specifics, the introduced legislation was used as guidance for the investigation. Within the Act, the Council requested an independent, non-partisan, and research-based organization to conduct this study, selecting the National Policing Institute (the Institute), (formerly the National Police Foundation).

Purpose

The purpose of the Institute's independent review of the Metropolitan Police Department's (MPD) protest threat assessment process is to determine whether threat assessments conducted by MPD have been or are influenced by bias when planning for and executing a response to First Amendment demonstrations. The legislation specifically requested that the study utilize arrest data, public and officer injury data, type of injury reports, fatality numbers, officer deployment data, tactical and type of weaponry used, and Federal Bureau of Investigation (FBI) terrorist watchlist data to determine if and how MPD responses varied. The Institute's team worked to gain access to and review all available data regarding MPD responses to first amendment demonstrations to determine if bias played a role in MPD threat assessments from January 2017 – January 2021, and to provide recommendations for mitigating bias in the threat assessment process and producing a report that captures the information.

Findings

A review of available data was conducted. The review suggested that the information requested pursuant to the legislation had limited value in estimating or identifying bias in the threat assessment process used to plan for First Amendment demonstrations. Routinely collected administrative data, such as arrest, injuries, and use of force, are affected by several factors that are outside the threat assessment process. These indicators are more indicative of officer and event participant behaviors. Therefore, the data detailed in the legislation that precipitated this review may be useful for assessing MPD's response to First Amendment demonstrations and participant behavior, but it provides little insight into determining if MPD's threat assessment and planning process was biased.

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1   See OPC Budget Chapter, page 4.

For this reason, the Institute took several additional approaches to analyze MPD's threat assessment process to determine if bias existed. Those steps included:

- Reviewing relevant MPD policies, procedures, reports and other documents relevant to threat assessment and response to First Amendment demonstrations;

- Interviewing MPD personnel involved with the threat assessment process;

- Reviewing each step of the process with subject matter experts;

- Comparing the MPD threat assessment process with the processes of other law enforcement agencies of similar size; and

- Conducting analysis of the Civil Disturbance Unit (CDU) manuals using inductive thematic content analysis.

Based on this analysis conducted by the Institute team - which admittedly was limited by lack or incompleteness of data - the Institute team did not find indications of bias in the data provided by the MPD, nor in the processes used to assess threat in preparation for First Amendment demonstrations in the District. That said, it is critical that the MPD continue to ensure all MPD policies, procedures, processes, and training are firmly grounded in constitutional policing precepts that explicitly respect First Amendment activity and emphasize neutral, non-biased approach to demonstrations. While this is implicit in current MPD practice, it would be beneficial for MPD to explicitly state it in policy.

The MPD utilizes a threat assessment process that is governed by District legislation and informed by years of experience in managing thousands of demonstrations a year. Overall, the MPD threat assessment process is consistent with the practices found in major city law enforcement agencies, however it lacks resources and well-defined policies and procedures. As the protest environment continues to become more dynamic and volatile, the Institute team believes the recommendations in this report will help the MPD improve its threat assessment process, create guardrails to reduce negative impacts from bias, and support the department's efforts to allow the voices of protestors to be heard, while maintaining public safety in the District.

Recommendations

The Institute team made several recommendations in this report that will bolster the transparency, resourcing, and structure of the MPD's threat assessment process through improvements in staffing, training, process, and bias reduction strategies.

SECTION 1: PROJECT BACKGROUND

Purpose

In early 2021, the Council of District of Columbia (the District), in collaboration with the Office of Police Complaints (OPC), directed the Institute to written legislation, known as the Bias in Threat Assessments Evaluation Amendment Act of 2021[2], to investigate the Metropolitan Police Department (MPD) and the influence of bias in managing demonstrations. This legislation was in response to the protest climate within the District during 2020 and 2021.During this period, there were numerous demonstrations, some of which lasted several months. Additionally, the MPD responded to and supported the U.S. Capitol Police during the January 6, 2021, siege on the United States Capitol.

Within the Act, the Council requested an independent, non-partisan, and research-based organization to conduct this study, selecting the National Policing Institute (the Institute) (formerly the National Police Foundation). The purpose of the Institute's independent review of the Metropolitan Police Department (MPD) threat assessment process is to determine whether threat assessments conducted by MPD have been or are influenced by bias when planning for and executing response to First Amendment demonstrations.

Further, the Bias in Threat Assessments Evaluation Amendment Act of 2021 tasked the Institute team with the following:

1. To determine whether MPD's response varied by race, color, religion, sex, national origin, or gender of those who engaged in First Amendment demonstrations.

2. Based on this determination, to provide recommendations to prevent bias from impacting MPD's threat assessment processes and outcomes.

If during the review, the Institute team determined there was no indication of bias, the team was tasked with recommending a process to ensure that bias does not influence MPD's response to or create disparate treatment during future demonstrations. The Bias in Threat Assessments Evaluation Amendment Act of 2021 requested that the study utilize arrest data, public and officer injury data, type of injury reports, fatality numbers, officer deployment data, tactical and type of weaponry used, and Federal Bureau of Investigation (FBI) terrorist watchlist data to determine if and how MPD responses varied.

The goal of this study was for the Institute's team to gain access to and review all available data regarding MPD responses to First Amendment demonstrations to determine if bias played a role in MPD threat assessments from

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2   D.C B24-0094 24th Council. (2021). Bias in Threat Assessment Act of 2021.

January 2017 to January 2021. The goal also included providing recommendations for mitigating bias in the threat assessment process and producing a report that captures the information.

Scope and Approach

To provide a comprehensive assessment of the Metropolitan Police Department's (MPD) use of threat assessment before and during First Amendment demonstrations in Washington, DC from January 2017 to January 2021, and to determine whether MPD engaged in bias-based practices when conducting threat assessments, the Institute team needed to start by understanding the number of events that occur in the District each year, how they are tracked, and how threat assessments are conducted. The Institute team requested a list of all First Amendment demonstrations and special events that occurred between January 2017 and January 2021. MPD advised that they respond to events of all sizes and the District experiences First Amendment demonstrations, both permitted and non-permitted almost daily. Therefore, the Institute requested the MPD provide a record of all significant events that occurred in the District within the study period. The MPD provided the team with the following approximations of events during this time.

Year	Number of Events
2017	8
2018	9
2019	24
2020	22
2021	44
2022 (through January)	10

MPD advised that there is not a detailed tracking system that records the number of planned, spontaneous, permitted, or unpermitted events held in the District. In addition, MPD indicated that due to the number of federal, state and local law enforcement agencies operating in the District it would also be necessary to determine which agency had primary responsibility for the event and which agency provided mutual aid to get an accurate accounting of MPD-led responses.

MPD develops Civil Disturbance Unit manuals (CDU), which are large reports (several hundred pages each) that document MPD planned response to special events and First Amendment demonstrations. While, MPD does not create CDU manuals for all events that it responds to, MPD representatives indicated that CDU manuals are associated with large scale events. MPD staff did not, however, articulate the number of people that constitutes a large scale event.[3] Upon receipt of the CDU manual log and an example manual, the Institute team reviewed the materials and determined that manuals contained information on the allocation of resources (equipment and personnel), intelligence/threat assessment information, summaries of the events, and other operational information. It should be noted that much of the information contained in the manuals was not relevant for this review.

Due to the size of the manuals, the Institute team selected a convenience sample of First Amendment demonstrations that occurred in the District within the respective temporal boundaries, conducted research, and provided analysis to determine if bias played a role in how MPD conducted threat assessments. From this sample, the Institute team conducted open-source research on each event to gauge the type of police presence at these demonstrations. The team leveraged deductive content analysis to assess MPD CDU manuals, policy documents, training records, and

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3   Institute meeting with MPD representatives on May 10, 2022.

other event-based records. Furthermore, the Institute team also utilized structured interviews to further understand the response and intelligence processes in assessing First Amendment demonstrations. The interview questions were developed after a thorough policy review and were designed to further illuminate MPD practices regarding intelligence collection, analysis, dissemination, and threat assessment within the context of First Amendment demonstrations.

Due to the volume of demonstrations that occur in the District on a daily basis, and the time parameters allowed to conduct this assessment, the Institute purposefully selected a total of 22 events, averaging approximately five per year from January 2017 until January 2022. The legislation requested that the period of review end in January 2022. Because this represents only the first month of 2022, there were not enough events with CDU manuals in 2022 to be accessed to complete a proportional sample of five events per year.

Access to Data, Information and Perspectives

Closely following the Council of the District of Columbia and OPC's request, the Institute team requested the following data from MPD to establish which datasets would provide the most complete and comprehensive information. The team developed a convenience sample of planned and spontaneous demonstrations that the MPD managed in the District from 2017 through January 2022 (see Legislation Data section). For each of the events in the sample, the Institute team requested the following data:

1. Number of arrests
2. Number of individuals present on the terrorist watch list
3. Officer injury data
4. Public injury data
5. Use of force reports
6. Number of officers deployed
7. Tactics and weaponry used
8. Joint Operations Center (JOC) / Command Center information associated with the selected sample of events

9. Metropolitan Police Department's standard operation procedures (SOP)
10. Metropolitan Police Department's policies, general orders, and directives
11. Metropolitan Police Department's Bureau/Division orders
12. Any training curricula and records
13. Reports associated with any kind of first amendment demonstration response
14. Incident Action Plans / Manuals
15. Threat Assessments
16. After-Action Reports (AAR)

While the MPD provided as much of the requested data as it had access to in a timely fashion, there were several limitations to the access, completeness, and collection of data. First, there was data that MPD did not have access to because the MPD was not the data curator or custodian (i.e., FBI's terrorist watchlist information or civilian injury data). Second, MPD was able to provide some types of data, however the department could not affirm that it was complete, due to collection inconsistencies. Third, some types of data were collected only for a subset of events making it difficult to generalize across MPD's response to events.

The MPD indicated that they do not collect or maintain data on public injuries that occur during protests, First Amendment assemblies, or special events. Compelling organizations, such as hospitals or other medical services, who collect and maintain injury data was outside of the scope of this investigation. Finally, given the unique context of the District, assemblies and protests vary greatly in scope, turnout, and purpose. As such, a limited number of events lend themselves to statistical analysis and so it is difficult to draw reliable estimates or generalizable statements about MPD's planning or response use these data.

Despite these limitations, a review of available data was conducted. Unfortunately, the review suggested that the information requested pursuant to the legislation had limited value in estimating or identifying bias in the threat assessment process used to plan for events. Routinely collected administrative data, such as arrest, injuries, and use of force, are affected by several factors. As a result, these data are more indicative of officer and event participant behavior. Therefore, the data detailed in the legislation that precipitated this review couldf be useful for assessing MPD's response to First Amendment demonstrations and participant behavior, but it provides little insight into determining if MPD's threat assessment and planning process was biased.

National Context

The First Amendment establishes the right of individuals to peaceably assemble and petition the government for change. The right to assemble and critique the federal government—which was originally made applicable to the states through the Due Process Clause of the Fourteenth Amendment—has continued to be one of the foundations of American democracy and identity.[4]

Throughout the years, demonstrations have spanned spectrums of political, economic, and civil rights topics. During the past decade, the number of topics that have galvanized protests across the nation has increased as well. Findings from the Armed Conflict Location & Event Data Project (ACLED) and the Bridging Divides Initiative (BDI) at Princeton University, suggest that there were 36,411 protests in the United States alone from January 1, 2020, through March 1, 2022.[5] During this period, protests spanned the spectrum of topics and politics and took place in communities of all sizes in almost every state. More than 7,750 protests were directly related to the Black Lives Matter movement; more than 7,550 protests were related to the COVID-19 Pandemic—ranging from protests against vaccination or mask mandates, lockdown orders, and other restrictions, to vigils for the deceased; and more than 1,250 protests related to federal and state election results.[6] The overwhelming majority of recent protests have been peaceful.

Violent demonstrations, also defined as "riots," are not protected by the First Amendment and violate many state and local criminal and civil laws. In many cases, riots are planned with the intent of damaging property and looting, creating chaos, and overwhelming the public safety response. During the same period in which there were 36,411 peaceful protests in the United States, there were also 1,033 events that were classified as riots.[7] The highest numbers of riots (445) occurred during the second quarter of 2020, followed by 264 riots in the third quarter of 2020, and 76 during the second quarter of 2021. The most recognizable event during this period was the attack on the U.S. Capitol on January 6, 2021.[8]

As demonstrated during the past couple of years, it is imperative that law enforcement and government officials identify the motivations and intents of the group(s) as early as possible to help inform the public safety response. Law enforcement agencies play a critical role in preserving the First Amendment rights of persons to peaceably assemble and ensuring the safety of the demonstrators and the neighborhoods in which the events occur.

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4   DeJonge v. Oregon, 299 U.S. 353 (1937).

5   Protests are defined by the ACLED as, "non-violent demonstrations, involving typically unorganized action by members of society"

6   ACLED Protest Dashboard.

7   A riot is defined by the ACLED as, "a violent demonstration, often involving a spontaneous action by unorganized, unaffiliated members of society"

8   United States Government Accountability Office. (2022). *Capitol attack: The capitol police need clearer emergency procedures and a comprehensive security risk assessment process*.

Local Context

Sitting just outside Virginia and Maryland, the District of Columbia is home to around 670,000 residents according to the 2021 census.[9] Although it is only around 68 square miles, Washington D.C. is considered the 20th most populous city within the United States. The District of Columbia is a highly diverse region, 43% of the population is Black/African American, 42% of the population is White, 12.08% of the population is Hispanic/Latino, 4.51% of the population is Asian, 0.36% of the population is Alaskan Native/American Indian, .07% is Pacific Islander, and those of other/two or more races make up about 8.88% of the population.[10]

The District of Columbia houses numerous U.S. government institutions, foreign government institutions, private businesses, not-for-profit organizations, and locations of significant historical importance. These institutions and sites bring a vast array of American residents, visitors, advocacy groups, stakeholders, and associations to the nation's capital. Persons and groups frequently travel to the nation's capital to engage in special events and to give voice to their beliefs and concerns through First Amendment demonstrations.

Law Enforcement Landscape

Washington D.C is home to many national landmarks and federal entities that exist within separate jurisdictions. As a result, the MPD collaborates with numerous federal agencies daily regarding public safety matters. MPD provides assistance to 32 separate law enforcement agencies within the District, under authorities granted by the Police Coordination Act, as well as public safety agencies from George Washington University, American University, Catholic University, Georgetown University, Gallaudet University, and the University of the District of Columbia (UDC). These cooperative agreements identify the street boundaries that define the jurisdiction for each entity.[11] The MPD relies on daily communication with these agencies to plan for special events and to ensure public safety in the District.

The Metropolitan Police Department

The Metropolitan Police Department is 1 of the 10 largest departments in the country and is the primary law enforcement agency responsible for the District of Columbia. Chief Robert J. Contee III is the current chief of MPD and oversees over 4,000 sworn and civilian employees. The mission statement of the MPD is "to safeguard the District of Columbia and protect its residents and visitors with the highest regard for the sanctity of human life. [MPD] will strive at all times to accomplish our mission with a focus on service, integrity, and fairness by upholding our city's motto Justitia Omnibus -- Justice for All."[12]

The Special Operations Division (SOD), a division within the MPD's Homeland Security Bureau (HSB) provides oversight, at the direction of the chief and his designee (the deputy chief) for planning, coordination, and response to special events and First Amendment assemblies. The Intelligence Branch, an entity, within the Homeland Security Bureau is responsible for collecting intelligence, conducting First Amendment investigations and inquires, and providing intelligence to MPD executives charged with planning MPD's response to special events and Frist Amendment assemblies.

9   U.S Census Bureau. (n.d.). *U.S. census bureau QuickFacts: District of Columbia*. Census Bureau QuickFacts. Retrieved August 31, 2022

10   DC Health Matters. (n.d.). *DC health matters: Demographics: City: District of Columbia*. Copyright (c) 2022 by DC Health Matters. Retrieved August 31, 2022

11   D.C.gov. (n.d.-a). Cooperative agreements. MPDC. Retrieved August 30, 2022

12   D.C.gov. (n.d.). *MPDC: Mission and value statement*. MPDC. Retrieved August 30, 2022

SECTION 2:
MPD POLICY REVIEW

Provisions Relevant to First Amendment Assemblies, Special Events, and Intelligence

To protect the First Amendment rights of all persons, the MPD must collect and analyze information and initiate investigations to prevent criminal activity conducted under the guise of First Amendment activities and criminal acts of civil disobedience that threaten public safety or the District's security. At the same time, MPD must ensure their policies, procedures, processes, and training are firmly grounded in constitutional policing precepts that explicitly respect First Amendment activity and emphasize a neutral, non-biased approach to demonstrations. While this is implicit in current practice at MPD, it would be beneficial to explicitly state it in policy.

Awareness of Events and Assemblies, Information Collection, and Analysis

The MPD Intelligence Branch learns of upcoming First Amendment events and demonstrations in two main ways. First, an organizer files a permit with a permitting agency in the District of Columbia. Permitting agencies in the District include the MPD Special Operations Division (SOD), the National Park Service (NPS), and the United States Capitol Police (USCP). Additionally, the MPD Intelligence Branch may become aware of First Amendment activity through open-source information or via partner communications.

Permitted Events and Demonstrations

Some institutions and places of special interest and significance generate regularly occurring events and demonstrations, most of which the MPD advised, are permitted. The nature of these events and the permitting process present opportunities to assess the various factors necessary to ensure First Amendment protections and the provision of public safety. During the planning process, MPD's Intelligence Branch (Intel) reviews permit information, establishes contact with the organizers and maintains communication during the planning process, reviews historical data, and reviews open-source information. Intel advises SOD of any prior history of counterdemonstrations, civil disobedience, criminal activity, arrests, etc. Additionally, Intel advises SOD of any new circumstances that may influence operational decisions, such as an increased number of participants, national or local issues that could influence event dynamics, other events occurring concurrently that may lead to the intermingling of attendees, or logistics arising with a new venue.

Unplanned Events and Demonstrations

Events and demonstrations that occur, and are not permitted, may require additional review by Intel before SOD advisement, and MPD policy determines the process by which further information gathering and assessment may occur. The MPD Intelligence Branch relies primarily on open-source information, information from partner organizations, and historical information for its analyses. MPD Intel is a member of several national intelligence-sharing organizations and groups.[13] During bi-weekly information-sharing meetings with National Capitol Region (NCR) partners, for example, MPD personnel discuss upcoming demonstrations and special events, and information is shared among the participating agencies to inform planning activities. If civil disobedience or criminal activity occurred during a past event, MPD Intel may engage in additional intentional information sharing, inquiring through law enforcement resources within and outside of the D.C. metropolitan area.

For non-permitted events, or events for which organizers do not communicate with law enforcement, MPD Intel primarily relies on open sources, historical data (if any), and information from law enforcement partners (if any) to make an assessment and determine the deployment of department resources, for example SOD assets.

Once MPD collects and analyzes information to complete a Demonstration Report, an intelligence assessment may be conducted, and disseminated within the MPD. The Demonstration Report is the primary vehicle for intelligence sharing and it is produced by MPD Intel. The Demonstration Report is shared with the MPD command staff, operational units, and with other law enforcement agencies. This running log of demonstrations provides MPD personnel and stakeholders with increased situational awareness so that they can respond to events and demonstrations with appropriate resources and reduce the impact on other critical police operations. The Demonstration Report contains the date, time, location, purpose, projected number of participants, and any other relevant data associated with the described event. Additionally, the report contains sources of the information which allows interested parties to contact the source and request further information if needed for planning purposes.

The daily Demonstration Report is not the only vehicle for sharing information and building situational awareness. In some instances, MPD Intel will provide more regular and focused updates related to upcoming demonstrations. This information may be shared via departmental emails or in-person briefings. The regularity of these updates is influenced by factors such as the size of the demonstration, anticipated civil disobedience (typically identified in publicly accessible social media postings), and counterdemonstrations that have the potential to negatively impact public safety. On these occasions, MPD Intel organizes regular meetings, and conference calls with law enforcement stakeholders to maintain a common operating picture.

The MPD intelligence process, a four-step process (see Exhibit 1), closely mirrors the four-step intelligence process (see Exhibit 2) propagated between the 1950s and 1970s and the five-step post-9/11 process (see Exhibit 3) which continues to be used by many local, state, and federal law enforcement agencies, intelligence agencies, and private sector companies.

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13   Major Cities Chiefs Association Intelligence Commanders Group, the Metropolitan Washington Council of Government's Police Intelligence Subcommittee, the AMTRAK Police Northeast Corridor Intelligence Working Group and in the New York City Police Department's Operation Sentry Program.
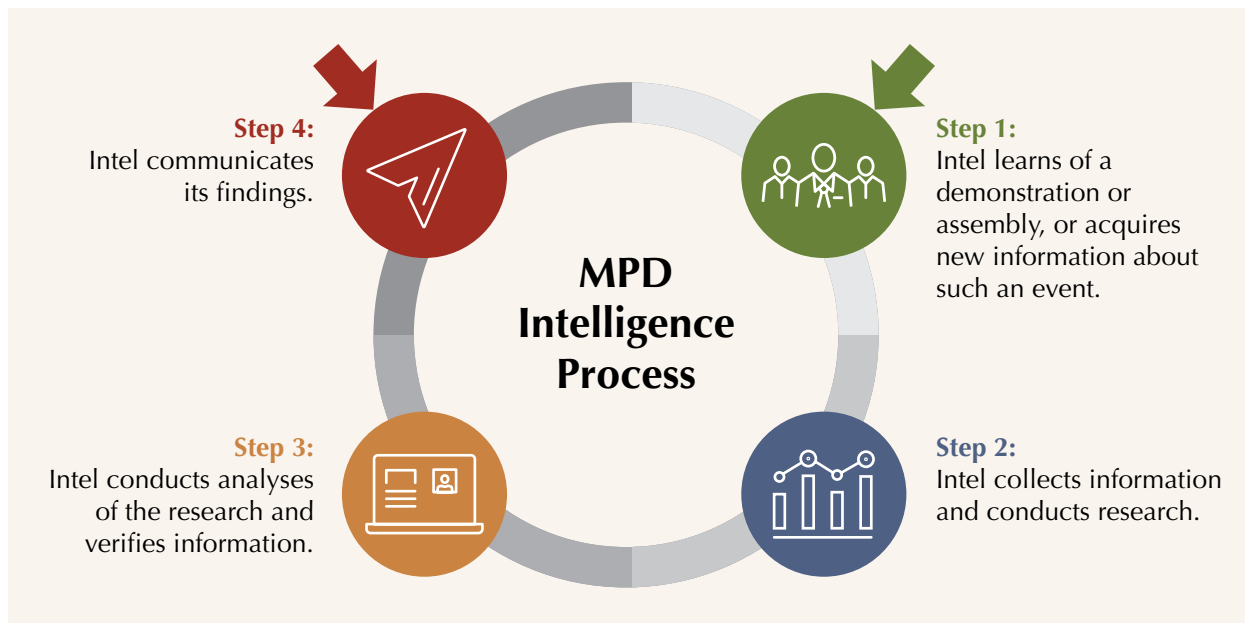
Exhibit 1. MPD Intelligence Process

Step 4:
Intel communicates its findings.

Step 1:
Intel learns of a demonstration or assembly, or acquires new information about such an event.

Step 3:
Intel conducts analyses of the research and verifies information.

Step 2:
Intel collects information and conducts research.

MPD Intelligence Process

Exhibit 2. 4-Step Intelligence Model

Direction

Dissemination

Collection

Analysis & Production

*"**Stage 1: Direction.** This is the natural starting point of the cycle and simply directs what intelligence needs to be gathered and for what purpose.*

***Stage 2: Collection.** This is the gathering of raw information and can include both open and covert data, from both human and technological sources.*

***Stage 3: Analysis and production.** This is where the raw information is interpreted. Specific consideration should be given to the reliability, validity, and relevance of the information and the product should be transformed into a product suitable for the recipient.*

***Stage 4: Dissemination.** The last step is the distribution of the intelligence product to the consumers, often the people who directed its collection."*[14]

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14   Kirby, S., & Keay, S. (2021). Improving intelligence analysis in policing. Routledge. P. 7

Exhibit 3. Contemporary Intelligence Cycle Model

Law Enforcement Planning, Decision-Making & Action

1 Planning & Direction

2 Collection

3 Process

4 Analysis & Production

5 Dissemination
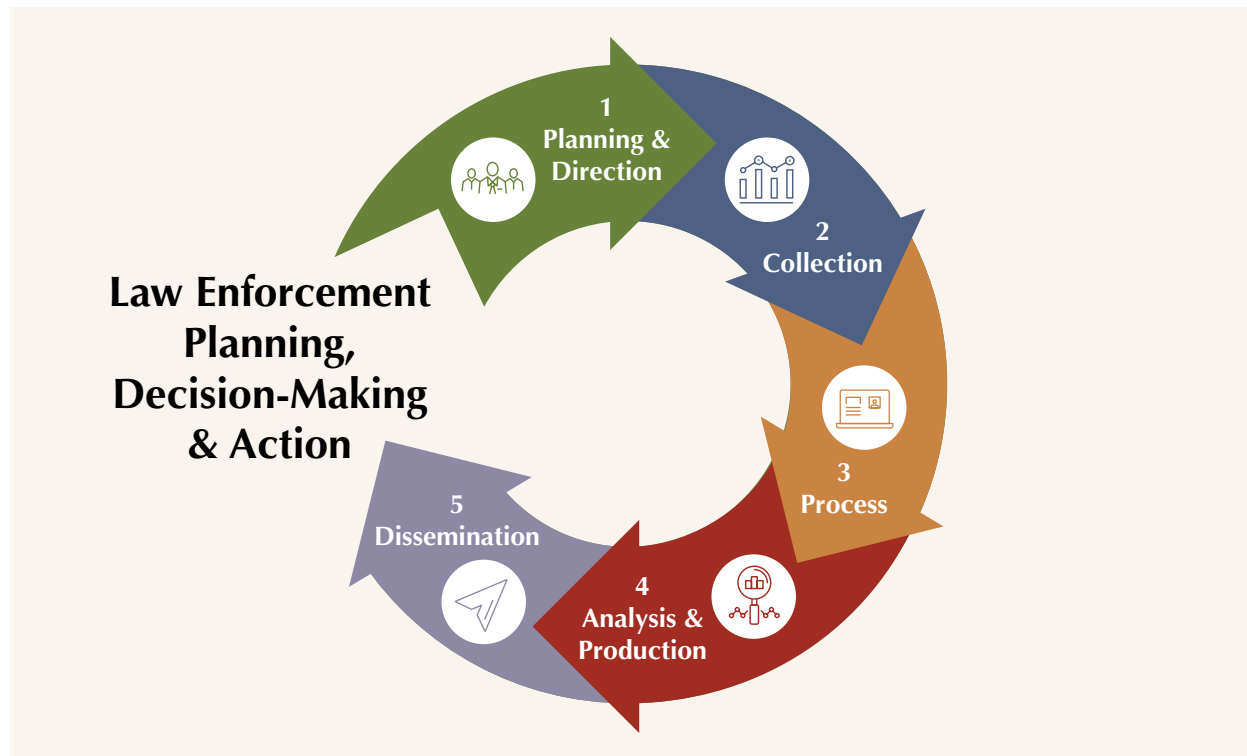
Iowa Division of Intelligence and Fusion Center[15]

In law enforcement, the intelligence process is considered a component of an overall risk management strategy. The intelligence process generally follows the cycle of planning, collection, collation, analysis, dissemination, and feedback.[16] The nature of the intelligence process is that it is not linear, rather it is ongoing.[17]

A formal, documented, and appropriately resourced intelligence process supports the appropriate use of public resources to maintain public safety during First Amendment demonstrations. A formal process provides procedural justification and helps to identify and curtail cognitive biases from unduly influencing assessments. A formal intelligence process would include criteria for consideration before deploying law enforcement and other District to manage First Amendment demonstrations.

Planning

MPD generally leverages the intelligence process when learning about known First Amendment gatherings and activities. According to the MPD, the process begins with planning. The MPD chief convenes a weekly intelligence meeting.[18] These senior MPD leadership meetings provide an opportunity to discuss scheduled events in the District, details regarding the events, and what the posture will be for an event, and intelligence considerations.[19] The occurrence of the meetings is not specified in or required by MPD policy or procedure.

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15   Iowa Department of Public Safety. (n.d.). *The intelligence production cycle*. The Intelligence Production Cycle | Iowa Department of Public Safety. Retrieved September 26, 2022

16   David L. Carter, "Law Enforcement Intelligence: A Guide for State, Local and Tribal Law Enforcement Agencies" 3rd Ed., 2022, p. 67

17   For purposes of clarity, the Institute presents the process as linear.

18   NPI Team Interview with MPD Chief Carroll. July 26, 2022

19   Interview with MPD staff member on July 26, 2022

As previously mentioned, information discussed concerning first amendment demonstrations is collected from a variety of sources. These sources are primarily permits filed with the MPD, open-source observation of what is posted on the Internet and social media platforms,[20] or information from other law enforcement agencies, or the National Capitol Region Threat Intelligence Consortium (NTIC). Some events are routinely held on a regular schedule, such as the Christmas tree lighting (annual), Cherry Blossom Festival (annual), the March for Life (annual), the Presidential Inauguration (every four years). Others are one-time events such as the 2019 Women's March and the 2018 Unite the Right event.

The weekly (or more frequent as conditions warrant) intelligence meeting is a best practice and should be memorialized in department policy and procedure.

Intelligence Collection

Intelligence collection refers to the activities that intelligence professionals use to gather raw data or information to prepare finished intelligence reports. The number of collection activities can be constrained by a variety of factors such as time limitations and information access.

According to interviews with MPD staff, the categories of information the department collects to make an assessment concerning a First Amendment demonstration include: day, date, time, location, expected attendance, duration, name of organizers, type of activity (whether the event is stationary or mobile), whether items such as signs or sound amplification devices will be used, march routes, planned unlawful activity (for example, demonstrators planning to be arrested), presence of notable persons/celebrities, and purpose of the event. MPD may also contact local hotels and transportation services to determine the size of an assembly and whether counterprotest is possible. According to interviews, this information is not retained in any database and may not be allowed to be in a database according to statute.[21]

It is important to note that MPD is barred by local law from conducting investigations into First Amendment protected activities absent actual or threat of criminal activity.[22] Thus, individuals or groups that plan acts of civil disobedience that do not rise to criminal offenses cannot be investigated in advance.[23] This District standard is higher than requirements found in other cities, such as New York City. Therefore, MPD typically relies on other methods to gain insight into planned and permitted events. According to interviews conducted by the Institute team; the most common source is online social media postings that are available to the public.

Availability and accuracy of information are critical for decision makers to make a proper resource assessment. Permit applications and outreach to event organizers provides MPD with the ability to collect information directly from the organizers as a primary source. MPD staff noted that this can present logistical challenges because some organizers use high estimates or provide aspirational attendance figures. MPD senior leadership indicated that they encourage people and groups to file permits, however following the permit process is not required for an event to be held.

According to MPD senior leadership, some highly active groups intentionally avoid notifying the City or MPD of their planned first amendment activities. Failing to make the city or the MPD aware of protests activity makes resource planning more difficult. This difficulty in turn may interfere with broader public safety and delivery of other city services.

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20   MPD Directive EO-21-025 Social Media for Investigative and Intelligence Gathering Purposes dated November 8, 2021

21   Interview with MPD staff member on July 11, 2022

22   DC Code § 5-333.01 et seq. (Police Investigations Concerning First Amendment Activities Act of 2004)

23   MPD Directive JSTACC 18-01 "Intelligence Branch Standard Operating Procedures During First Amendment Protected Activities. Dated March 18, 2019

The strategy of groups intentionally avoiding contact with the city, or the police, is not unique to the District. In fact, law enforcement agencies' order maintenance objectives sometimes conflict with the wishes of protest organizers, who "often see an element of surprise and unpredictability as essential requirements for a successful and noticeable protest."[24] Tactics used by some individuals and protest groups require a police response to protect the rights of others who are not directly involved with protest activity. It is when such tactics are used, that advance knowledge helps authorities appropriately prepare.

To refine and improve the accuracy of crowd estimates, MPD leverages relationships with private security and other police agencies to identify patterns and volume.

Open-Source Information Collection

Much of MPD Intel's intelligence work is grounded in open-source information collection, with a focus on social media postings. This information collection activity when analyzed is known as "social media intelligence" or "SOCMINT" and is one form of open-source intelligence. The Office of the Director of National Intelligence defined open-source intelligence as "intelligence produced from publicly available information that is collected, exploited, and disseminated in a timely manner to an appropriate audience for the purpose of addressing a specific intelligence requirement."[25] Open-source information is wide-ranging, not limited to what can be found using the major search engines, and generally free, although some open-source information may require a fee to access.[26] Some examples of publicly accessible information include social media content, news media, gray literature[27], publicly accessible court records, public databases, leaked documents, information available to the public by request (for example, census data), subscription-based industry journals, or any information that can be viewed by any casual observer.

Open-source information, although wide-ranging and diverse in type, can be organized into two categories: institutionally generated information (for example news media and gray literature) and individually generated data. Individually generated data, specifically social media data presents a rich data source. Social media are web-based platforms that encourage and facilitate communication, interaction, and the creation and circulation of content within virtual communities.[28] In their 2012 article on social media intelligence, Sir David Ormand et al., wrote that,

> *"we live in the age of social media. Facebook, Twitter, Google, and LinkedIn are all examples of the rapid transfer of people's lives – interactions, identities, arguments, and views – onto a new kind of public and private sphere; a vast digital social common."[29]*

Although popular social media platforms provide opportunities for legally appropriate engagement, criminal entities who pose a threat to public safety may exploit these platforms for elicit purposes. From a law enforcement perspective, these platforms are of interest as criminal acts may leave traces on them relevant to investigations.[30] As policing has entered an information era in which order maintenance is data-driven, intelligence-led, and technologically

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24   Charmian Warren "Intelligence Gathering and the need for control: managing risk in public order policing" p. 22 2013, Center for Crime and Justice Studies

25   Kirby, S., & Keay, S. (2021). Improving intelligence analysis in policing. Routledge. Pg 26

26   Kirby, S., & Keay, S. (2021). Improving intelligence analysis in policing. Routledge.

27   Gray literature refers to materials and research produced by organizations outside of the traditional commercial or academic publishing and distribution channels, such as reports, working papers, government documents, white papers, and evaluations

28   Walsh, J. P., & O'Connor, C. (2018). Social Media and Policing: A review of recent research. Sociology Compass, 13(1).

29   Omand, D., Bartlett, J., &; Miller, C. (2012). Introducing social media intelligence (SOCMINT). Intelligence and National Security, 27(6), 801–823.

30   Trottier, D. (2015). Opensource intelligence, social media and law enforcement: Visions, constraints and critiques. European Journal of Cultural Studies, 18(4-5), 530–547.

mediated,[31] police in several countries utilize intelligence units to conduct online surveillance, reconstruct events, and extract official knowledge about the activities, personalities, and motivations of suspects and victims via social media.[32]

SOCMINT provides law enforcement officials with near real-time situational awareness, providing police with the ability to collect and cluster social media in a way that clarifies unfolding events and allows for a more rapid identification of emerging events than traditional reporting mechanisms.[33]

SOCMINT also provides police agencies with insight into groups, allowing them to better understand activities and behavior that may help inform the police response. Additionally, given the appropriate legal authorization, police could use SOCMINT to spot new, rapidly emerging hot topics; learn how groups react to specific, perhaps volatile, events; learn when a group is planning demonstrations that could lead to violence; and identify groups planning counter-demonstrations that could escalate to violence.[34] Lastly, SOCMINT can be leveraged to identify criminal intent or criminal elements in the course of an inquiry both for the prevention and prosecution of crime.[35]

Although SOCMINT presents tremendous opportunities for law enforcement application, the exploitation of publicly accessible social media data also presents challenges associated with infringement on personal privacy and transparency. Critiques of SOCMINT are largely characterized by fears of political discrimination, misunderstanding of online behavior, re-framing social media platforms as criminal platforms, limitations to otherwise protected public dissent-related activities, and mass surveillance of the public.[36, 37, 38, 39, 40]

MPD's Social Media Policy

The MPD's executive order on social media for investigative and intelligence-gathering purposes addresses many of the concerns raised by privacy advocates, providing MPD personnel with guidance on the use, management, administration, and oversight of social media for investigative and intelligence purposes. The MPD does not require supervisory authorization for overt monitoring, searching, and collecting of information available in the public domain for a legitimate law enforcement purpose. MPD policy does govern undercover social media account use for criminal investigation and intelligence collection. The MPD personnel authorized to use these accounts are assigned to the department's criminal investigations division, intelligence division, internal affairs division (criminal investigations only), narcotics and special investigations divisions, and youth and family services division. The department's restriction on which personnel are authorized to use undercover accounts balance the need to leverage technology in pursuit

31   Kelling, G. L., & Moore, M. H. (2005). The evolving strategy of policing. In T. Newburn (Ed.), Policing: Key readings (pp. 88–108). London: Willan.; Ericson, R. V., & Haggerty, K. D. (1997). Policing the risk society. Oxford: Oxford University Press. ; Manning, P. K. (1992). Information technologies and the police. Crime and Justice, 15, 349–398.

32   Walsh, J. P., &; O'Connor, C. (2018). Social Media and Policing: A review of recent research. Sociology Compass, 13(1).

33   Omand, D., Bartlett, J., & Miller, C. (2012). Introducing social media intelligence (SOCMINT). Intelligence and National Security, 27(6), 801–823.

34   Ibid.

35   Ibid.

36   Dencik, L., Hintz, A., & Carey, Z. (2017). Prediction, pre-emption and limits to dissent: Social Media and Big Data uses for policing protests in the United Kingdom. New Media & Society, 20(4), 1433–1450.

37   Trottier, D. (2015). Open source intelligence, social media and law enforcement: Visions, constraints and critiques. European Journal of Cultural Studies, 18(4-5), 530–547.

38   Rønn, K. V., & Søe, S. O. (2019). Is Social Media Intelligence Private? privacy in public and the nature of Social Media Intelligence. Intelligence and National Security, 34(3), 362–378.

39   Vrist Ronn, K. (2016). Intelligence ethics: A critical review and future perspectives. International Journal of Intelligence and Counterintelligence, 29(4), 760–784.

40   Trottier, D. (2015). Open source intelligence, social media and law enforcement: Visions, constraints and critiques. European Journal of Cultural Studies, 18(4-5), 530–547.

of public safety and the need to protect personal privacy. Furthermore, this restriction ensures that only investigative staff with training and experience in criminal investigations and civil rights are authorized to engage in these efforts.

Personnel seeking approval to use undercover accounts must request written approval from the MPD's Narcotics and Special Investigations Division (NSID) commander through their chain of command before creating and using an account. The NSID commander who is responsible for reviewing new accounts serves as a built-in level of protection against members engaging in investigating and intelligence gathering activities without appropriate approvals and supervision. MPD policy further prevents personnel from using undercover accounts on personal devices and using personal accounts for investigative purposes. The policy notes that the accounts are "discoverable" in court and that the user has no expectation of privacy which allows the department to monitor undercover accounts to ensure their use is consistent with departmental policy. Lastly, the policy requires that MPD personnel authorized to use these accounts complete training prior to using social media for an investigation or intelligence purposes.

Intelligence Collation and Processing

Collation or information processing is the step that assists analysts in arranging information that will be helpful in making an assessment. This information can come from many sources, but collation is the process of turning it into usable format for analysis.

MPD personnel place the most basic information regarding upcoming events in a Daily Demonstration Report.[41] The collation of information from various sources and bases of knowledge are in the report. The report contains start time, duration, location, purpose, number of anticipated attendees, and any other information that can aid understanding the event.[42] This report is sent via email during weekdays to select MPD staff.[43] It has "law enforcement sensitive" markings and a strongly worded disclaimer that information contained in the report is subject to change. The report lists the events MPD is aware of in chronological order. MPD leadership uses the information to conduct their assessments of an event.

MPD does not maintain a database of occurrences and responses at past events. The MPD may perform an after-action review of a response to an event. According to MPD leadership, these are usually limited to instances where the event was designated to be a National Special Security Event (NSSE) or where an unusual occurrence requires investigation. A formal after-action review would occur at the direction of the MPD Chief of Police.

Among the various reports that may be of value to MPD in making assessments are documents that relate to previous First Amendment activities (to the extent the documents may exist). Those documents may include:

- estimated size of crowd
- duration of event
- number of arrests, if any, at the event
- criminal or violations charges against arrestees
- public or officer injury reports

- tactics used by protesters
- whether mutual aid was required
- tactics used by police
- prior year assessment (when one exists)

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41   While no procedure exists for creating the Daily Demonstration Report or sharing that information, each command staff member that the Institute team interviewed indicated this report is used for information sharing and First Amendment activity awareness purposes.

42   Exemplar provided by MPD dated July.

43   Based on interview responses.

MPD leadership have significant experience in managing First Amendment demonstrations and the use of intelligence to guide these activities. They maintain voluminous knowledge of processes and procedures around these topics. However, instead of relying on the current process, the MPD should implement a more formal process to document what these tenured professionals know about First Amendment protests and how to safely, appropriately, and lawfully manage events.

Intelligence Analysis

Although MPD's intelligence process is not clearly defined as a distinct policy, each of the steps in the four-step model are discussed in relevant MPD policies. Furthermore, several members of the agency responsible for intelligence activities referred to the steps during interviews, and it appears that the process is well established in practice and well known among relevant MPD personnel.

Analysis is the act of converting basic or raw information into finished intelligence - an assessment. An intelligence product ideally helps decision makers determine a course of action. Senior MPD officials indicated that there is no formal threat assessment process for protest activity.[44] The MPD does, however, convene personnel (virtually or in-person) to discuss and determine resources needed for known events as well as to ensure that staffing and resource allocation support critical policing functions District-wide. Although MPD lacks a formal process for assessing threat regarding First Amendment demonstrations, its leadership makes important decisions for managing demonstrations based on information collected concerning such activities. The collaborative, conversational meetings that MPD leadership described is a component of the act of analysis. Ideally, this meeting allows for diversity and differences of opinion regarding the information collected and its application to managing the demonstrations.

Knowledgeable and active consumers of intelligence can produce more accurate intelligence assessments. The interaction between those who produce and deliver assessments and those who consume intelligence products supports a better public safety strategy. At MPD, the quantity of inputs and the small number of analysts limits the ability for MPD to have a rigorous intelligence process. However, based on the information provided, the Institute review team believes the process is dynamic, interactive, and produces appropriate outputs to inform resource allocation to protect First Amendment demonstrations. Furthermore, the act of determining whether and what resources may be needed, what equipment may be available, and what tactics may be helpful in preserving the peace and ensuring the safe conclusion of the First Amendment demonstration, is vital to balancing public safety with the protection of First Amendment rights.

In addition to the categories of information collected as indicated above, MPD leadership consider multiple factors when assessing the event, and whether and to what extent an event requires police resources. For example, MPD may assess coded and symbolic language observed in social media post and other communications by assembly participants, organizers, and counter-protestors. Symbolic language constitutes language used to convey meaning through the use of images, references, and linguistic devices intended to convey meaning known only by a pre-determined in-group. Symbolism in communications may indicate the date, venue, tactics, influence of current national or international events (e.g., Supreme Court decisions, military actions), number of events simultaneously planned in the city, have groups involved been associated with unlawful activity in the past, experience with similar events in prior years (but not after-action reports).

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44   Interview with Director Montagna of MPD Joint Strategic and Tactical Analysis Command Center (JSTACC).

Bias Recognition and Mitigation in Analysis

Police departments, like MPD, acknowledge the importance of impartiality in policing and incorporate statements that recognize freedom of speech and expression. These statements are consistent with those found are in many police department policy manuals. MPD Crowd Management procedure states:

"For events involving First Amendment assemblies, MPD protects the constitutional and statutory rights as well as the physical safety of people to assemble peacefully and exercise free speech while preserving the peace." [45]

The possibility of bias in intelligence analysis has long been acknowledged. Sherman Kent, a Yale University professor who is considered the founder of modern intelligence analysis, acknowledged that analytic or cognitive bias was "so ingrained in mental processes for tackling complex and fluid issues that it required a continuous, deliberate struggle to minimize."[46]

Therefore, professional analysts should be trained to recognize when personal biases enter the analysis process. The different cognitive biases that exist are too numerous to list and fall outside the scope of this engagement.

Investigative Activity in the Context of First Amendment Activity

Investigations undertaken before unlawful conduct occurs must not be based solely on First Amendment protected activities. In recognition of the necessity to balance public safety with the protection of constitutional rights, MPD policy mandates that its members, "may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against any person engaged in First Amendment activity to punish, retaliate, prevent, or hinder the person from exercising their First Amendment rights."[47] Though, when statements are made that advocate criminal activity threatening public safety or city security or indicate an apparent intent to engage in such criminal conduct, an investigation may be warranted.

Barring exigent circumstances, these investigations are subject to review and written approval by the Intelligence Division Commander, Joint Strategic and Tactical Analysis Command Center (JSTACC), or any official of the rank of commander assigned to the MPD's Homeland Security Bureau.[48] Upon approval, these investigations are mandated by MPD policy to be conducted under the supervision of the commander, JSTACC, and the commanding officer of the Intelligence Branch. These requirements ensure that there is an increased level of scrutiny for investigations that could, if conducted without sufficient reason and guidance, infringe on the constitutional rights of the public. Although exigency circumstances may allow MPD members to initiate investigations outside of this approval process, MPD policy mandates that members seek approval as soon as possible, allowing for flexibility to respond to exigency and ensuring supervision is not disregarded completely during special circumstances. In either case, these investigations are to be terminated once there is no longer a legitimate law enforcement purpose that would justify continued investigation and after the exhaustion of all logical leads, protecting the public against limitless investigations that increase the likelihood of constitutional right infringement.

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45   MPD Directive GO-HSC-801.01 Crowd Management and Civil Unrest September 20, 2021

46   Jack Davis "Sherman Kent and the Profession of Intelligence Analysis" Occasional Papers: Vol.1 Number 5, Nov. 2002, Sherman Kent Center of Intelligence Analysis

47   JSTACC 18-01, Intelligence Branch Standard Operating Procedures During First Amendment Activities

48   Per MPD policy exigent circumstances with regard to criminal investigations and First Amendment assemblies include the protection of life or substantial property interests, apprehension or identification of a fleeing offender, destruction of alteration of evidence, or the avoidance of serious impairment or hindrance to a criminal investigation.

MPD members are authorized to engage in two levels of investigative activity regarding First Amendment activity that are intended to provide the necessary flexibility to act in advance of the commission of any criminal activity threatening public safety or security of the city. These are preliminary inquiries and full investigations.

Preliminary Inquires
Per MPD policy (JSTACC 18-01), preliminary inquiries occur when MPD receives information about an allegation of possible criminal activity which does not justify a full investigation due to a lack of reasonable suspicion of any criminal activity. MPD may initiate preliminary inquiries in response to indications of potential criminal activity threatening public safety or the security of the city. This allows MPD to respond to ambiguous or incomplete information. These inquiries are leveraged when there is no complainant or when allegations and information originate from a source of unknown reliability. Per MPD policy (JSTACC 18-01) preliminary inquiries are limited to 60 days and are carried out to obtain the information necessary to make an informed judgment as to whether a full investigation is warranted.

Preliminary inquiries although limited by policy, still require written authorization from the commander (or equivalent civilian member), Intelligence Division, or an official of the rank of Commander or above assigned to the Homeland Security Bureau. Though limited to 60 days, preliminary inquiries may be extended with approval from the commander (or equivalent civilian member), Intelligence Division. Extensions are limited to one subsequent 60-day period. Extension requests must be written and describe the information already collected while demonstrating why additional time is required. This process ensures that there is a record of requests and approvals and provides a process by which a supervisor may make an informed decision about the length of an inquiry. If more time is required to pursue the inquiry, the approval must come from the chief of police, and the written request is required to include the same criteria needed for a 60-day extension.

While MPD policy allows the use of all lawful investigative techniques in preliminary inquiries, it also mandates that reasonable precautions be taken to minimize interference with First Amendment activities without impairing the success of preliminary inquiries. Allowed investigative techniques during an authorized preliminary inquiry include the use of undercover officers and informants. However, the use of these techniques requires written approval and authorization obtained from the commander (or equivalent civilian member) of the Intelligence Division.

Not all investigative techniques used in the course of an authorized preliminary inquiry require supervisory approval. Investigative techniques that may be used without prior authorization from a supervisor during an authorized preliminary inquiry include, but are not limited to:

    a.   examination of MPD indices and files; available federal, state, and local government records; and public sources of information.

    b.   interviews of complainant(s), potential subject(s), previously established informants, and other sources of information.

    c.   interviews of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or coworkers (unless the interviewee was the complainant).

Preliminary inquiries that fail to disclose sufficient information justifying a full investigation shall be terminated, and per MPD policy, MPD shall maintain summaries of terminated preliminary inquiries, omitting information that would identify individuals, to be maintained in the Intelligence Branch consistent with MPD's records retention schedule.

MPD affords its members the flexibility to collect information relevant to planning for and ensuring the safety of First Amendment assemblies through preliminary inquiries. MPD provides its members the ability to initiate preliminary

inquiries relating to a First Amendment Assembly, for public safety reasons, without authorization, to gather public information regarding future First Amendment assemblies, and review notices and approved assembly plans. MPD members may also communicate overtly with the organizers of a First Amendment assembly concerning the number of persons expected to participate, the activities anticipated, and other similar information regarding the time, place, and manner of the assembly. Furthermore, MPD personnel may communicate overtly with persons other than the organizers of a First Amendment assembly to obtain information relating to the number of persons expected to participate in the assembly. And lastly, members may collect information on prior First Amendment assemblies to determine what police resources may be necessary to adequately protect participants, bystanders, and the general public, and to enforce all applicable laws.

Full Investigations

MPD policy (JSTACC 18-01) states that a full investigation may be initiated when there is reasonable suspicion (less than probable cause) to believe that the persons, groups, or organizations to be investigated are planning or engaged in criminal activity that would threaten public safety or the security of the city.[49] Additionally, MPD policy declares that a full investigation may be conducted to prevent, solve, or prosecute said criminal activity. While allowing an investigator to consider any facts or circumstances that a prudent investigator would consider, MPD policy explicitly states that suspicion that is based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group does not constitute reasonable suspicion, as articulated in the agency unbiased policing general order.[50] [51]

Like MPD policy regarding preliminary inquiries, any lawful investigative technique may be used in a full investigation. However, like preliminary inquiries, when members initiate a full investigation, reasonable precautions should be taken to minimize interference with First Amendment activities without impairing the success of the investigation. The policy does outline exceptions, in which the following techniques may be used in an authorized investigation after written, signed approval and authorization are obtained from the commander (or equivalent civilian member) of the Intelligence Branch.

The referenced techniques include:

- Wire interception and interception of oral communications, as defined in D.C. Official Code § 23-541;

- Undercover officers and informants; and

- Mail covers, mail openings, pen registers, and trap and trace devices.

In seeking written authorization of a full investigation and use of undercover officers, the commanding officer of the Intelligence Branch must consult with the Assistant Chief of the Homeland Security Bureau, the Commander of the Intelligence Branch, and the MPD General Counsel. The commanding officer of the Intelligence Branch shall then submit a written recommendation to the Commander of the Intelligence Division, articulating the facts or circumstances that create a reasonable suspicion that a criminal act has been, is being, or will be committed; and describing the relevance of the First Amendment activities to the recommended investigation. This authorization must be approved by all persons listed above.

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49   MPD policy defines reasonable suspicion as a belief based on articulable facts and circumstances indicating a past, current, or impending violation of law.

50   GO-OPS-304.15 Unbiased Policing

51   MPD policy defines biased policing as the practice of a law enforcement officer singling out or treating differently any person on the sole basis of race, color, ethnicity, national origin, religion, age, gender, gender identity, sexual orientation, family responsibilities, disability, educational level, political affiliation, source of income, place of residence or business of an individual. Furthermore, MPD general order, GO-OPS-304.15 (Unbiased Policing), bars its members from engaging in Biased policing.

The policy indicates that a full investigation may be initially authorized for 120 days and continued upon renewed authorization every 120 days, for up to one year. Renewal authorization shall be obtained from the commander (or equivalent civilian member) of the Intelligence Division. All requests for renewal authorization and action thereon, shall be in writing, shall describe the information already collected, and shall demonstrate that an extension is reasonably necessary to pursue the investigation.

Investigations open for more than one year shall require written approval by the chief of police and shall state the justification for the investigation. MPD policy states that authorizations shall be reviewed, every two months, by a panel consisting of the Assistant Chief, Homeland Security Bureau commander (or equivalent civilian member), Intelligence Division commanding officer of the Criminal Intelligence Branch, and the MPD general counsel. Furthermore, these authorization reviews shall be memorialized including a description of the results of the investigative file review, the authorizing official's printed name, position title, signature, and date signed. If an investigation is terminated, it can be reopened pursuant to the same procedures and standards, as required for the initiation of an investigation.

Record Keeping

MPD policy mandates that the commander of the Intelligence Division (or equivalent civilian member) shall evaluate information retained in Intelligence Branch files and is responsible for verifying specific criteria for its inclusion in Intelligence Branch files. The commander of the Intelligence Division is charged with assessing (a) the reliability of the source of the information and the, (b) validity and accuracy, (c) the relevancy, and (d) the timeliness of the content of the information before filing said information. Information determined to be inaccurate, unreliable, and irrelevant is not added to files. Files stored must indicate whether the criteria have been corroborated, and information stored in files determined not to meet the criteria mentioned above must be purged. Furthermore, MPD policy bars MPD from collecting or maintaining information about the political, religious, social, or personal views, associations, or activities of any individual, group, or organization unless such information is material to an authorized investigation or preliminary inquiry involving First Amendment activities.

Additionally, the policy prevents MPD from knowingly being included in an Intelligence Branch file any information obtained in violation of any applicable federal, state, or local law, ordinance, or regulation. The department's policy does allow for limited information sharing of information obtained during preliminary inquiries and investigations when specific criteria are met. MPD may release the information when it:

a. falls within the investigative or protective jurisdiction or litigation-related responsibility of the receiving agency;

b. may assist in preventing any criminal act or the use of violence, or any other conduct dangerous to human life; or

c. is required to be disseminated by interagency agreement, statute, or other law.

MPD policy introduces further scrutiny of information by requiring that the Intelligence Division commander (or equivalent civilian member) review and approve all requests for dissemination of information from an Intelligence Branch file, which must be written and maintained for a minimum of five years. Moreover, MPD policy ensures that Intelligence Branch file information is not shared with a non-law enforcement agency, department, group, organization, or individual, except as authorized by law, protecting the privacy of individuals who are the subject of a preliminary inquiry or investigation. Lastly, MPD policy ensures that records are not kept indefinitely. After each investigation, any information in the file deemed no longer accurate, reliable, relevant, and timely shall be redacted of personal identifiers. The documentation is then sealed in the investigative file for auditing purposes, retained for 18 months, and destroyed thereafter.

Although MPD's record keeping practices regarding preliminary inquiries and investigations are in line with national standards, MPD does not maintain records of the meetings, discussions held during meetings, and assessments made during discussions when planning for First Amendment assemblies. It does not appear that this is purposeful lack of record keeping. Record keeping that included a log of meetings and major decisions made would assist MPD would benefit from keeping records of these discussions when reviewing the assessment made and when planning responses to First Amendment assemblies and special events, and could help in providing transparency to the public.

SECTION 3:
ANALYSIS

Threat Assessment

The MPD investigative activities involving First Amendment activities is governed by local law. This law provides for limited use of MPD resources for intelligence gathering purposes. In Washington D.C. the predicate standard for investigations into First Amendment activity is criminal activity. In many other major cities in the United States the investigative predicate is lower at "unlawful activity" connected to First Amendment activity.

During interviews with MPD senior leadership from the Special Operations Division (SOD), Intelligence Bureau and Joint Strategic and Tactical Analysis Command Center (JSTACC), MPD personnel frequently stated that they do not use a formalized threat assessment process, in which a rubric or matrix with distinct observable, measurable variables and indicators are used to provide a threat level or determine a response. Instead, MPD leverages an informal but collaborative approach in which the SOD commander, SOD Special Events captain, SOD lieutenant, Homeland Security Planning Chief, Intelligence Branch commander, and chief meet to discuss all known information about the event.

These officials then make determination about resource deployment based on the information available through open-source means, permit information, law enforcement information, and historical knowledge. Although MPD does not conduct formal threat assessments, they do receive threats assessments from other agencies. Additionally, when memorializing the department's response plan for a First Amendment assembly, MPD includes a threat assessment section in its Civil Disturbance Unit (CDU) Manuals.

The Institute team used a convenience sample of special events and First Amendment assemblies that occurred between 2017 and 2021, for which MPD developed a CDU manual, to analyze the informal threat assessments memorialized in MPD's CDU manuals. The convenience sample contained 22 events. The events in the convenience sample were intentionally selected to capture a diverse array of event types and included permitted assemblies, pop-up assemblies, special events determined to be national security events, hybrid planned and pop-up assemblies, and special events with First Amendment activity.

Exhibit 4. Assembly and Event Type Reviewed
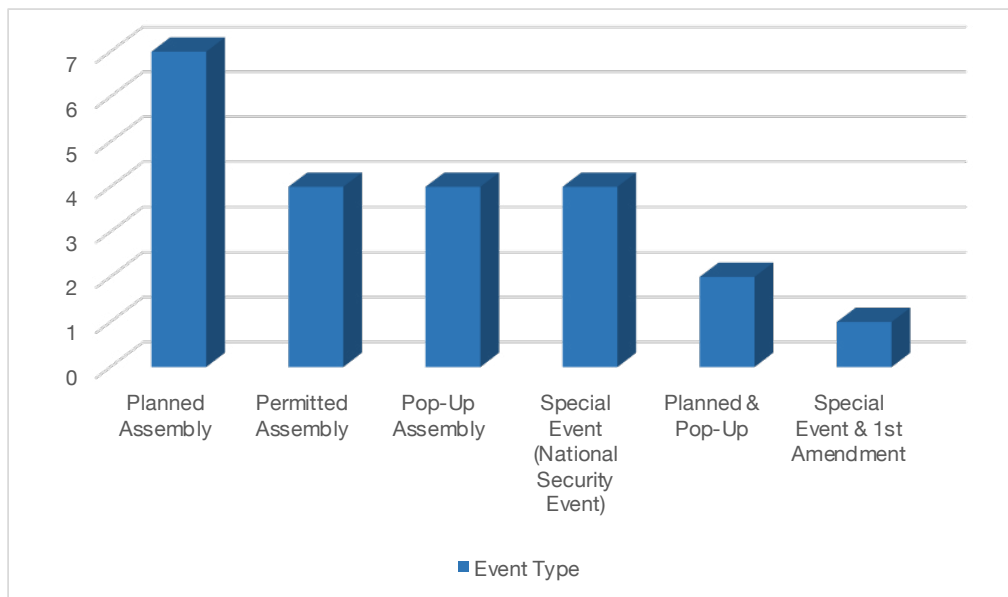
Exhibit 5. Assembly and Event Type, by Year
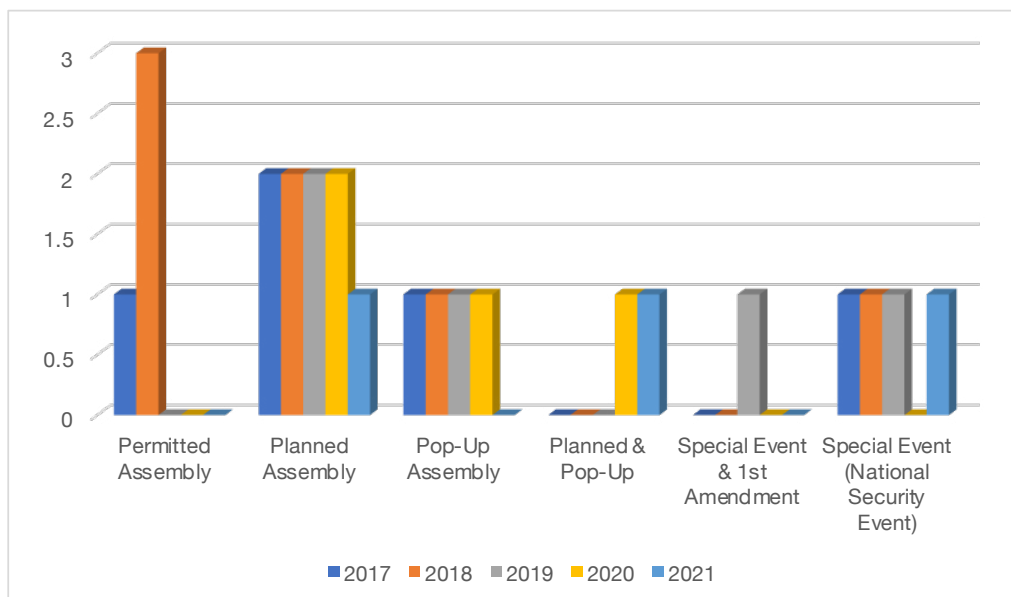
Upon reviewing CDU manuals for these 22 events, an assessment of threat assessment documentation was conducted using inductive thematic content analysis, restricted to events that contained a threat assessment section. Of the 22 CDU manuals analyzed, 16 (72.7%) included a designated threat assessment/intelligence section. Of the 16 manuals that met the screening criteria, three of the threat assessment sections were partially redacted. Because those documents were redacted it was determined that they could not be assessed for the presence of the variables described by MPD staff as valuable in determining MPD's response and resource allocation. The redacted events included the 2019 Women's March, the 2018 Unite the Right, and President Trump's 2019 State of the Union Address.

The events for which manuals containing unredacted threat assessment sections included events and assemblies in support of and contesting a range of issues and perspectives, including right-wing activism, antifascism, racial justice, anti-abortion, anti-gentrification, government recognition and protection of Prisoners of War and Missing in Actions, remembrance of Turkish victims of Armenian Terror, corruption in politics, demilitarization, police use of force, self-governance, presidential administration threats to democracy, and Pro- Former President Trump. Only 2 of the 13 (15%) CDU manuals contained a determination of the potential for violence or a Homeland Security threat at the respective event/assembly. However, the potential for violence was discussed in the threat assessment section of all 13 of these manuals. Because MPD officials reported the use of the same factors for determining their response to events, the presence of these variables was assessed within the 13 manuals with unredacted threat assessment sections.

Exhibit 6. Event Considerations During Planning

Factors Considered by MPD	# of CDU Manual Threat Assessments Containing Reference to Assessment Variable
Determination: Project Crowd Size	9 (69%)
Determination: Planned Civil Disobedience	5 (38%)
Determination: Potential for Counter-Protestors	2 (15%)
Determination: Potential for Terrorism	2 (15%)

Within the sample of CDU manuals reviewed by the Institute team, the assessment factors used by MPD, such as crowd size, planned civil disobedience, potential for counter-protestors, and potential for terrorism were discussed inconsistently. Of note was that the assessment factor "potential for counter-protesters" was only referenced twice in the manuals that were reviewed. This observation is significant because the MPD personnel interviewed by the Institute team referenced the value of this factor in assessing the potential for violence.

Other factors MPD uses to assess events and determine a response posture were infrequently referenced in threat assessment reviewed.

Exhibit 7. Historical Considerations Use in Planning

Factors Considered by MPD	# of CDU Manual Threat Assessments Containing Reference to Assessment Variable
Observed Threats	1 (7%)
Previous Behavior (Involved Group)	8 (60%)
Previous Violence	2 (15%)

Although these factors were infrequently referenced, the lack of reference does not indicate that MPD personnel did not consider them when planning for the events associated with the CDU manuals that were reviewed. However, due to the lack of documentation around these factors in the CDU manuals, it is not possible to determine whether they were consistently assessed.

The lack of consistent documentation, in which threat factors were enumerated in the CDU manuals may be the result of (a) the MPD not conducting formal threat assessments or (b) the lack of a formal process for consistent documentation. Based on the documentation reviewed, there were no observed indications of biases identified by the Institute team.

Comparison with Similar Law Enforcement Agencies

Law enforcement agencies around the United States use key procedural and operational considerations for information collection, and information analysis for special events/public gatherings, including First Amendment activities. The considerations can be found in the agencies' policy manuals. The Institute team gathered this information for the purpose of comparison, from policy manuals and/or in discussions with MPD leadership.

Exhibit 8 provides the considerations concerning factors for police presence. These are objective, data-driven criteria upon which to determine whether, and the extent to which police presence may be necessary. Information known in advance of an event helps officials in assessing risks to public safety. These are considerations used by the agencies listed, not outcome determinative, and not all inclusive.

The following table (Exhibit 32) provides a comparison of the following select law enforcement agencies: City of New York Police Department (NYPD), New Jersey State Police (NJSP), City of Philadelphia Police Department (Philadelphia PD), city of Los Angeles Police Department (LAPD)/County of Los Angeles Sheriff's Department (LASD), and the Metropolitan Police Department (MPD) based on a review of policy documents and MPD staff interviews.[52]

Exhibit 8. Comparison to Other Law Enforcement Agencies

Activity	NYPD	NJSP	Philadelphia PD	LAPD/LASD	MPD
Policy of Neutrality & Objectivity	X		X	*Fragmentary[53]	
Information Collection:					
Permit Application	X	X		**when applicable[54]	X
Open Source	X	X	X	X	X
Public Notice - Information	X	X	X	X	X
Mayors' Office / Agencies	X	X		X	X

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52   County of Los Angeles Sheriff's Department (LASD), Manual of Policy and Procedures, and Emergency Operations Procedures; City of Los Angeles Police Department, Manual and Directive No. 11, Crowd Management, Intervention and Control, Various Departmental Communications; NYPD condensed from Patrol Guide procedure #213-11; Philadelphia PD Directive # 8.3.

53   **Fragmentary** means both LAPD and LASD have provisions in their respective policies and procedures mandating neutrality in responding to First Amendment Activities, however, they are articulated in various places (e.g., training documents) and could be consolidated and codified in a specific explicit policy statement.

54   **When Applicable** means both LAPD and LASD do not require a permit for First Amendment activity (including labor actions/strikes). No permit is required to demonstrate in California,; however cities and counties may require a special event permit for non-First Amendment activities that reach a certain threshold. These events are often the venues for protests and counter-protests, as well as labor actions. All First Amendment activities are subject to reasonable time, manner, and place caveats; but these can't be used to wholesale chill speech. For example, the California Penal Code specifically protects First Amendment Activity (§640(d)(4) Penal Code). Private property can be excluded under certain conditions (such as in areas not open to the public or parking lots), but not Shopping Malls which are considered the functional equivalent of public gathering spaces (except the above cited exclusions). See, e.g., *Allred v. Harris*, 14 Cal. App. 4th 1386, 1388, 1392 (1993); *Trader Joe's Co. v. Progressive Campaigns, Inc.*, 73 Cal. App. 4th 425, 433-34 (1999); *Costco Co. v. Gallant*, 96 Cal. App. 4th 740, 755 (2002); *Fashion Valley Mall, LLC v. NLRB*, 172 P.3d 742, 752-54 (Cal. 2007); *Hamburg v. Wal-Mart Stores, Inc.*, 116 Cal. App. 4th 497, 509 (2004); *Fashion Valley*, 42 Cal. 4th at 864-866 (California Supreme Court struck down content based shopping center rule that prohibited speech urging a boycott of one of the tenant stores). This is highly nuanced and influenced by both California State and Federal law. *See Watchtower Bible and Tract Soc'y of New York v. Village of Stratton*, 536 U.S. 150, 153, 165-66, 169 (2002); Marsh v. Alabama, 326 U.S. 501, 504 (1946); *Lovell v. City of Griffin*, 303 U.S. 444, 451-52 (1938).

Activity	NYPD	NJSP	Philadelphia PD	LAPD/LASD	MPD
Fusion Center / Other Law Enforcement	X	X		X	X
Information Analysis:					
Factors of Police Presence:					
Crowd Size	X	X	X	X	X
Demographic of expected crowd	X	X		X	X
Size of Venue	X	X		X	X
Layout of Venue	X	X		X	
Past Critiques of Similar Events	X			X	
Criminal History at Location	X	X		X	
Availability of Alcohol	X	X		X	
Presence of Notables (Entertainers)	X	X		X	
Manner of Ticket Sales (ticket, open event, lottery)	X			X	
Manner of Admission (free, ticket, open)	X	X		X	X
Crowd Mobility				X	X
Nature or Sensitivity of Event	X	X	X	X	X
Presence of Private Security / Ushers	X	X		X	
Possibility of Opponents Counterdemonstrators	X	X	X	X	X
Query NCIC on Organizers / Participants	NO	NO	UNKNOWN	NO	NO
Considerations for Suitability Demonstration Space:					
Time	X	X	X	X	X
Day	X	X	X	X	X
Date			X	X	X
Vehicular Traffic Impact	X	X		X	X
Pedestrian Traffic Impact	X	X		X	X

Activity	NYPD	NJSP	Philadelphia PD	LAPD/LASD	MPD
Proximity to Related Events	X	X		X	X
Proximity to Unrelated Events	X			X	
Proximity to Schools, Hospital, HOW, Large Public or Business Facilities	X			X	
Any other Condition that may create a hazard or serious inconvenience to the public or participants	X	X		X	
After Action Report for Events	[1]			X *fragmentary	

[1] Only for certain events, not routinely prepared

Legislation Data

The Legislation requested the Institute to analyze arrest data, officer and community member injury reports, fatalities, officer deployment data, weaponry and tactics used, whether riot gear was used, and whether members in attendance were on the FBI terrorist watchlist for each event selected. Columns with insufficient data or are unknown at this time are marked using n/a.

Event: 2017 Freedom of Speech Rally, DC Antifascist Coalition, and Rally Against Political Violence – 6/25/2017

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	7 CDU units were deployed for this demonstration	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Uniform of the day is specified as "uniform of the day" with redactions	n/a	n/a (MPD is not the custodian of this data)

Event: 2017 Million Mask March – 11/05/2017

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	3 Special Operations Division (SOD) squads, 4 CDU units, and other support units to be deployed as requested by the detail commander.	Specific demonstration formations and tactics used for this specific event by MPD are unknown.	n/a	n/a (MPD is not the custodian of this data)

Event: 2017 Presidential Inauguration – 1/17-22/2017

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
230	1	n/a (MPD is not the custodian of this data)	n/a	Specific officer deployment data and CDU deployments are unknown for this detail.	2 use of force reports	n/a	n/a (MPD is not the custodian of this data)

Event: 2017 Rolling Thunder Parade and Thunder Alley – 5/27-28/2017

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	Uniform of the day specified as "uniform of the day with whistles and visibility gear to assist with traffic control." Deployment numbers are unknown. Officers assigned to traffic posts to assist with flow of traffic.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. No weaponry or munitions were reported to have been used.	n/a	n/a (MPD is not the custodian of this data)

Event: Mother of All Rallies 2017 – 9/15-17/2017

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	Redactions made detailing specific CDU deployment from 9/15-9/17.	Uniform of the day is listed as "uniform of the day" with redactions made for those assigned to crowd control, security, and traffic control.	n/a	n/a (MPD is not the custodian of this data)

Event: First Amendment Activities Turkish American National Committee 2018 – 4/24/2018

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	6 different CDU units to be activated by request of detail commander.	Specific demonstration formations and tactics used for this specific event by MPD are unknown.	n/a	n/a (MPD is not the custodian of this data)

Event: March for Life 2018 – 1/19/2018

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	SOD assignments made for Explosive Ordinance Division (EOD), admin, planning, harbor, events, Traffic Safety and Specialized Enforcement Branch TSSEB, K-9, Emergency Response Team (ERT), air support, DSO teams, horse mounted units, and the intelligence branch. Redactions made that cannot specify number of deployments.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Uniform of the day is listed as "uniform of the day" with redactions made for officers specified for the detail.	n/a	n/a (MPD is not the custodian of this data)

Event: Million Mask March 2018 – 11/5/2018

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	4 SOD squads, 14 different CDU squads deployed for this detail. The operational period for this detail is unknown due to redactions.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. 'Class B' Uniforms are requested as the uniform of the day.	n/a	n/a (MPD is not the custodian of this data)

Event: President Donald Trump State of the Union Address 2018 – 1/30/2018

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	Specific CDU response is unknown due to redactions. Assistance from federal entities and agencies is listed as a part of this assignment detail.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Uniform of the day is unknown. Plain clothes members are assigned to this detail in addition to those in uniform.	n/a	n/a (MPD is not the custodian of this data)

Event: Unite the Right 2018 – 8/12/2018

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
1 arrest made	1 officer injury report	n/a (MPD is not the custodian of this data)	n/a	28 different CDU units activated for this detail.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Uniform of the day for CDU members assigned to scooters is light blue shirts with mountain bike units wearing their mountain bike uniforms. All members in the rank of lieutenant and above are to wear their Class B uniform and members issued Body Worn Cameras (BWC) must wear them.	n/a	n/a (MPD is not the custodian of this data)

Event: GoGo Justice Demonstration – 8/14/2019

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	3 SOD CDU units with 2 CDU units, intel, Emergency Services Division, Explosive Ordinance Division, and Criminal Apprehension teams are listed as a part of this assignment detail.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Class B uniforms requested as well as Body Worn Cameras (BWC)	n/a	n/a (MPD is not the custodian of this data)

Event: President Donald Trump State of the Union Address 2019 – 2/5/2019

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	7 different CDU platoons activated for this detail.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Class B uniforms requested as well as BWC.	n/a	n/a (MPD is not the custodian of this data)

Event: Rolling Thunder Parade and Thunder Alley Demonstrations 2019 – 5/24-25/2019

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	7 CDU units are assigned to this detail with redactions made.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Members are to wear Class B service uniforms with visibility vests, whistles, and charged flashlights. BWC's that were issued are to be worn for this detail.	n/a	n/a (MPD is not the custodian of this data)

Event: We the People March 2019 – 9/21/2019

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	4 CDU units deployed. Due to redactions of report, specific number is unknown.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Officers to wear Class B uniforms and BWC.	n/a	n/a (MPD is not the custodian of this data)

Event: Women's March 2019 Manual – 1/19/2019

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	EOD, admin, harbor, events, TSSES,K-9, ERT, air support, DSO, horse mounted, and intelligence units are listed as a part of this detail.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Members are to wear Class B service uniforms with visibility vests, whistles, and charged flashlights. BWC's that were issued are to be worn for this detail.	n/a	n/a (MPD is not the custodian of this data)

Event: Enough is Enough GoGo Demonstration 2020 – 9/22/2020

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	1 ERT unit is assigned for this detail with SOD providing specialized support along traffic posts.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Class B uniforms are requested as the uniform of the day.	n/a	n/a (MPD is not the custodian of this data)

Event: First Amendment Demonstrations – 9/22-27/2020

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	Number of CDU deployment is unknown due to redactions.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Class B uniforms are requested as the uniform of the day.	n/a	n/a (MPD is not the custodian of this data)

Event: March for Life Event 2020 – 1/24/2020

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	7 different CDU platoons were activated for this detail.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Class B uniforms are requested as the uniform of the day.	n/a	n/a (MPD is not the custodian of this data)

Event: White House Siege 2020 – 9/17-21/2020

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	10 different CDU units were listed for this detail along with assistance from other units.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Class B uniforms are requested as the uniform of the day.	n/a	n/a (MPD is not the custodian of this data)

Event: First Amendment Demonstrations – 1/4-7/2021

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
81	65	n/a (MPD is not the custodian of this data)	n/a	CDU deployment data is redacted.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Munitions deployed.	n/a	n/a (MPD is not the custodian of this data)

Event: First Amendment Demonstrations – 1/24-31/2021

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	28 different CDU units are assigned for this detail.	Specific demonstration formations and tactics used for this specific event by MPD are unknown.	n/a	n/a (MPD is not the custodian of this data)

Event: Presidential Inauguration 2021 – 1/20/2021

Arrests	Officer Injury Data	Community Member Injuries	Fatalities	Officer Deployment	Weaponry and Tactics	Riot Gear	Terrorist Watchlist
n/a	n/a	n/a (MPD is not the custodian of this data)	n/a	7 CDU units are assigned for this detail along with assistance from federal entities.	Specific demonstration formations and tactics used for this specific event by MPD are unknown. Class B uniforms and business casual uniforms for civilians are requested as the uniform of the day.	n/a	n/a (MPD is not the custodian of this data)

SECTION 4:
RECOMMENDATIONS

In the United States, individuals have the constitutional right to peacefully assemble and petition the government for a redress of grievances. The police are responsible for creating an environment that allows community members to exercise their right to protest, while maintaining public safety. There is no bright line that clearly identifies the shift from a lawful First Amendment demonstration to a destructive and unlawful riot. In any given protest there are likely to be those peacefully exercising their First Amendment rights, and those committed to promoting conflict.

The causes and drivers of protests matter. Different events cause different types of protest responses from the community. However, there is a clear trend of escalating conflict and violence across protests in the United States. Increasingly, some portion of protest participants are organized, coordinated, armed, and oriented towards conflict.

Policies and procedures set the standard for the techniques, tactics, and behaviors that law enforcement officers utilize to engage protests. The likelihood and degree of conflict in a protest is driven by the dynamics of the demonstration; the growing tendency towards violence in many protests; the combination of policies and practices established well in advance of the protest; decisions by elected officials and police leadership as the protest unfolds; and tactics and behaviors of police officers and protestors during the event.

Prior to any First Amendment event, gathering timely and accurate information and conducting holistic threat assessments are critical to protecting the rights of protestors and maintaining community safety. The threat assessment process must carefully consider the impact of bias to protect against disparate treatment and promote police techniques, tactics, and behaviors that are exercised in response to the dynamics of the demonstration versus preconceived beliefs, perceptions, and judgements.

The Metropolitan Police Department (MPD) utilizes an informal threat assessment process that is governed by District legislation and informed by years of experience in managing thousands of protests a year. Overall, the MPD threat assessment process is consistent with the practices found in major city law enforcement agencies, however, it lacks resources and well-defined policies and procedures. As the protest environment continues to become more dynamic and volatile, the Institute believes the recommendations in this report will help the MPD improve its threat assessment process, create guardrails to reduce the negative impacts of bias, and support the department's efforts to allow the voices of protestors to be heard, while maintaining public safety in the District of Columbia.

Staffing

1. Due to the high volume of special events and First Amendment assemblies that MPD responds to, MPD would benefit from a full-time staff of trained analysts responsible for supporting MPD First Amendment demonstration planning, management of events, and after-action assessment. This would also inform future planning and implementation by memorializing post-event recommendations. The creation of a specialized group of analysts for First Amendment threat assessments would also enable the MPD to formalize the threat assessment process and aid in preventing biased threat assessments.

2. MPD should also consider augmenting their analytical cadre with field-level tactical liaison officers familiar with operations-intelligence fusion (and legal frameworks) for public order events to assist commanders with integrating analytical insight into tactical management. This would ensure that the analytical team is cross-disciplinary and understands the tactical working environment to which assessments will be provided.

Training

1. MPD should consider providing training to its analytic staff to support the collection of information used to assess special events and First Amendment assemblies, process the information, analyze information, and make intelligence assessments in support of MPD's mission to protect the First Amendment right to assembly and to prevent violence and property destruction.

2. At the time of this assessment, the MPD assigns one investigative research specialist who is responsible for collecting open-source information. According to the MPD senior leadership who were interviewed the research specialist does not provide and analysis of the information collected and reported. The investigative research specialist should be trained and onboarded as a criminal-intelligence analyst and prepared to collect open-source intelligence, process information, analyze it, and make and present assessments to MPD executive staff.

3. MPD's professional analysts should be trained to recognize where personal biases enter the analysis process, identify different types of cognitive biases, and their impacts on structured judgement and analytic assessments.

4. Intelligence training for MPD staff should focus on identifying and mitigating cognitive biases and the use of Structured Analytic Techniques (SATs).

5. To identify and mitigate potential bias in analysis. MPD should consider educating current and future senior executive staff on how to be active consumers of intelligence.

6. Training on First Amendment activities must include both analytic staff and operational decision-makers. Training for operational decision makers should include special event planners, incident commanders, and watch commanders who manage MPD's response to events in the event of pop-up/no-notice events.

7. Training for analytical intelligence, personnel, decision-makers, and commanders must include developing an understanding of privacy issues, civil liberties, the right to lawful protest, as well as interaction with adjoining agencies to rapidly assess threats and operational aspects of the response to public order incidents, including lawful demonstrations, special events, and crowd management. This training should include developing an understanding of legal and policy considerations of intelligence and criminal justice information systems, including record retention, information dissemination, privacy, and civil liberties concerns, as well as compliance with 28 CFR part 23.

Process

1. MPD should consider creating a checklist for data collection efforts for threat assessments. MPD senior leadership and intelligence personnel all mentioned the categories of data for collection. However, MPD does not have a documented and formalized procedure or checklist of what data should be collected and what information to rely upon when conducting event assessments. Creating a rubric or checklist would assist in formalizing MPD's threat assessment process, ensure that the same variables are always considered when assessing events, and aid new decision makers brought into the assessment process as experienced members retire.

2. Processes for facilitating peaceful demonstrations must be neutral, impartial, limit bias, and balance liberty and public safety/security concerns. Processes should emphasize decision-making via informed risk assessment, which include explicit differentiation between and among various potential threat actors (i.e., protesters/counter-protesters) and their respective capabilities and intentions.

3. Assessments should include both analysis of threats (capabilities and intentions of actors) and tactical/operational perspectives (such as terrain; population density; crowd composition, including special populations; and traffic and pedestrian flow) to achieve operations-intelligence.

Bias Reduction

"At its core, intelligence analysis is a cognitive task, in which analysts must plan, search for, select, process, and interpret data to gain situational awareness and forecast an outcome of interest to customers."[55] One of the primary challenges in intelligence analysis is related to bias in the cognitive processes needed to conduct intelligence tasks. Cognitive bias results in systemic errors in judgment and decision-making that can occur at every phase of the intelligence cycle resulting in errors such as discounting, misinterpreting, ignoring, rejecting, or overlooking information.[56]

Cognitive bias is defined as "a pattern of deviation in judgment that occurs in a particular situation, leading to perceptual distortion, inaccurate judgment, illogical interpretation, or what is broadly called irrationality".[57] Belton and Dhami argue that these cognitive tasks are made more difficult because the "human mind is limited in terms of attention, perception, memory and processing capacity, and partly because the tasks itself can be extremely constraining and demanding".[58]

These biases may be present during the different stages of the intelligence process. For example, during the collection phase, when conducting open-source social media searches, analysts may rely on keyword searches that are easily retrievable from previous inquiries. Later in the process, those same analysts may place a disproportionate value on an identified subject matter expert regardless of whether their expertise applies to the subject. Furthermore, the analyst may ignore conflicting information from other sources favoring publicly accessible gathered online where potential threat actors congregate, not accounting for how threat actors may boast for credibility while having no intention of acting on their statements or the present on intentionally constructed and placed false information and counterintelligence.

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55   Belton, I. K., & Dhami, M. K. (2020). Cognitive biases and debiasing in intelligence analysis. In Routledge Handbook of Bounded Rationality (pp. 549). Routledge.

56   Hillemann, E. C., Nussbaumer, A., & Albert, D. (2015, September). The role of cognitive biases in criminal intelligence analysis and approaches for their mitigation. In 2015 European Intelligence and Security Informatics Conference (pp. 125-128). IEEE.; Heuer, R. J. (2019). Psychology of intelligence analysis. Center for the Study of Intelligence.

57   Tversky, A. & Kahneman, D. (1974). Judgement under uncertainty: Heuristics and biases, "Science, vol.185, pp. 1124 – 1131.

58   Belton, I. K., & Dhami, M. K. (2020). Cognitive biases and debiasing in intelligence analysis. In Routledge Handbook of Bounded Rationality (pp. 548-560). Routledge.

Identifying cognitive biases is not enough. There should be an ongoing use of methods and strategies for mitigating cognitive biases are needed to address these challenges. The following recommendations reflect insights from the current state of practice and research.

1. MPD personnel charged with collecting and analyzing information to produce intelligence and assessments should employ Structed Analytical Techniques (SAT's) as part of the agency's preventative posture, regarding bias-based policing, within the context of intelligence analysis and threat assessment. SATs are techniques designed to reduce cognitive bias, whose primary rationale is rooted in the belief that externalizing and decomposing the cognitive process will result in bias mitigation. While some SATs, such as the Analysis of Competing Hypotheses (ACH), were developed specifically for use by intelligence analysts, other SATs were originally used in other contexts but have since been applied in the field of intelligence analysis.[59]

2. Although, there have not been many research studies conducted to test the efficacy of structured analytical techniques (SATs), SATs are commonplace in the field, represent a core skill set during analyst training, and provide helpful ways of organizing information and making structured decisions.[60] MPD should consider intentionally creating psychological environments conducive to rational thinking.[61] This may result in MPD creating environments where they value praxis and the art of intelligence while grounding training in scientifically based assessment. This could result in MPD leveraging SATs while understanding potential limitations, altering the analysis environment, and introducing psychologically grounded bias mitigation strategies.

3. MPD should create a working environment where analysts and decision makers are encouraged to challenge preconceived notions, assessments, and observations presented when MPD personnel attempt to attain a clear, holistic view of the event that they are planning to protect.

4. MPD should use SAT's to combat cognitive biases. Three common forms of bias that may impact organizations engaged in the intelligence, public safety, and homeland security enterprises are groupthink, anchoring bias, confirmation bias. Groupthink occurs when the option that the majority of the group agrees with is selected or when conflicts within the group are ignored to establish consensus.[62] Anchoring/adjustment effect refers to the tendency to rely too heavily on a past reference or one piece of information when conducting analysis.[63] Confirmation bias occurs when analyst remain overconfident in an initial position, search for evidence in a way that supports a favored viewpoint, interpret evidence in a way that favors a preferred viewpoint, and resist change or insufficiently adjust confidence in a viewpoint in response to new conflicting evidence or when existing evidence is discredited.[64]

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59 Belton, I. K., & Dhami, M. K. (2020). Cognitive biases and debiasing in intelligence analysis. In Routledge Handbook of Bounded Rationality (pp. 548-560). Routledge.

60 Marrin, S. (2008). Training and educating U.S. intelligence analysts. International Journal of Intelligence and Counterintelligence. 22(1), 131-146. DOI:10.1080/08850600802486986

61 Belton, I. K., & Dhami, M. K. (2020). Cognitive biases and debiasing in intelligence analysis. In Routledge Handbook of Bounded Rationality (pp. 548-560). Routledge.

62 Pherson, K. H., & Pherson, R. H. (2020). *Critical thinking for strategic intelligence.* Cq Press.

63 Hillemann, E. C., Nussbaumer, A., & Albert, D. (2015, September). The role of cognitive biases in criminal intelligence analysis and approaches for their mitigation. In 2015 European Intelligence and Security Informatics Conference (pp. 125-128). IEEE.

64 Belton, I. K., & Dhami, M. K. (2020). Cognitive biases and debiasing in intelligence analysis. In Routledge Handbook of Bounded Rationality (pp. 548-560). Routledge.

MPD can reduce cognitive biases through the uses of SATs. For example, MPD may employ the analysis of competing hypothesis to combat confirmation bias, identifying a set of hypotheses, systematically evaluating data that is consistent and inconsistent with each hypothesis, and rejecting the hypotheses associated with too much inconsistent or conflicting data. MPD may also mitigate biases by valuing past data and experiences but not to the exception of new data or overvaluing previous experiences and observations. Additionally, MPD should evaluate the validity of all information considered when conducting an assessment and present the level of confidence in the information and information source when making collaborative assessments.

SECTION 5:
CONCLUSION

The National Policing Institute was selected to assess MPD's use of threat assessments regarding First Amendment assemblies from January 2017 to January 2021. Arguably, the Metropolitan Police Department (MPD) responds to assemblies and events in the nation's Capital at a level that is not experienced by other agencies. While the Institute's team was unable to determine whether MPD conducted biased threat assessments from January 2017 to January 2021, the team believes that MPD follows a threat assessment process that seeks to promote thoughtful, informed, and unbiased assessments. The MPD threat assessment process, although informal, leverages a committee approach, which provides an opportunity for operational review and discussion among MPD's leadership team. This process allows MPD leadership to identify and challenge unfounded assessments. It is our overarching recommendation that the MPD strengthen the current threat assessment process by institutionalizing the knowledge gained through experience in responding to thousands of first amendment activities to ensure public safety through fair and impartial threat assessment practices.

APPENDIX A: NATIONAL POLICING INSTITUTE STAFF BIOS

Sammie Wicks

Mr. Wicks is a Senior Program Manager at the Institute's Center for Targeted Violence Prevention. Prior to working with the National Policing Institute, Mr. Wicks served as a law enforcement officer for 10 years, with experiences ranging from property crimes investigator, terrorism liaison officer, targeted violence prevention officer, emergency response team grenadier, and crisis response officer. He began his law enforcement career with the Memphis Police Department in 2011, where he served in various roles to include patrol officer, crisis intervention officer, and community outreach officer. Mr. Wicks then served as a police officer with the Aurora Police Department (CO) from 2016 to 2021. As a member of the agency's Crisis Response Team, he developed and managed the agency's Targeted Violence Prevention Program.

Mr. Wicks has previously served as a Data and Research Task Force member on the Colorado Governor's Human Trafficking Council. Sammie currently serves as a Colorado Preventing Targeted Violence team member, supporting local threat management teams. Mr. Wicks is a member of several national and international committees, working groups, and professional organizations devoted to counterterrorism, preventing, and countering violent extremism, and behavioral threat assessment and management. Mr. Wicks has extensive experience and training in behavioral threat assessment, intelligence collection, intelligence analysis, and open-source intelligence. Mr. Wicks is an adjunct professor of criminology and criminal justice at Metropolitan State University Denver. Mr. Wicks' research focuses on transnational organized crime in diaspora communities, terrorist propaganda, and violent social movements. He holds an M.A. in International Security with a Middle Eastern and North African Religious and Political Thought specialization from the Josef Korbel School of International Studies at the University of Denver. He also holds a B.A. in History from Rhodes College.

Jennifer Zeunik, MPA

Jennifer Zeunik is the Director of the Institute's Local Programs Division and provides oversight, leadership, contract/grant, staff and financial management, and product development and quality control for the Institute's portfolio of state and local law enforcement projects. Ms. Zeunik has 20 years of public sector and nonprofit project management experience, working closely with all levels of government on policing issues focusing on finding data-driven, evidence-based solutions to policing challenges. She has extensive technical and managerial experience in the field of law enforcement operations and community policing and has overseen several critical incident reviews—including the police response to the Pulse Nightclub Shooting in Orlando (FL) and the terrorist attack in San Bernadino (CA) and reviews of police response to protests and demonstrations in Portland (OR), Charlotte (NC) and Minneapolis (MN).

In previous roles, Ms. Zeunik served as the Vice President of Programs for the Atlanta Police Foundation, and project manager with the International Association of Chiefs of Police where she managed a variety of programs funded through a diverse array of sources including federal grants, private funding, and state and municipal contracts. She has a Bachelor's Degree in Psychology and Criminology from Florida State University and a Masters of Public Administration from the University of Georgia, School of Public and International Affairs.

Frank Straub, Ph.D.

Dr. Frank Straub is the Director of the National Policing Institute's Center for Targeted Violence Prevention. Dr. Straub served for over 30-years in federal, state, and local law enforcement. He has led law enforcement/public safety agencies in New York, Indiana, and the State of Washington. He was the New York City Police Department's Deputy Commissioner of Training and Assistant Commissioner for Counterterrorism. Dr. Straub has participated in numerous studies of targeted violence events and the police response to First Amendment demonstrations. He administers the national Averted School Violence Project and consults with government and non-government organizations regarding extremism and terrorism prevention.

Dr. Straub has served on the U.S. Department of Justice, Office of Community Oriented Policing Services School Safety Working Group; U.S. Department of Homeland Security, Office of Intelligence & Analysis National Threat Evaluation & Reporting Program, Behavioral Analysis & Behavior-based Threat Assessment Working Group; the U.S. Department of Justice, Bureau of Justice Assistance, School Safety Task Team; and the International Association of Chiefs of Police, Mass Violence Advisory Initiative.

Dr. Straub serves as a reserve deputy sheriff in Calhoun County (MI). Dr. Straub holds a B.A. in Psychology, an M.A. in Forensic Psychology, and a Ph.D. in Criminal Justice. He speaks regularly at national and international conferences, has participated in numerous Congressional and White House briefings, and is a frequently invited commentator and analyst for national and international media outlets.

Elyse Hansen

Ms. Hansen is a Project Coordinator at the Institute's Local Programs Division and provides support to local law enforcement technical assistance projects. Prior to joining the National Policing Institute, she began her studies in Seattle University's Master of Arts in Criminal Justice Program and conducted research for the Office of Law Enforcement Oversight (OLEO) in King County focusing on police mental health responses, specifically the importance and effectiveness of CIT training (the report was eventually shared with King County through OLEO). Ms. Hansen also worked as a behavior technician, administering Applied Behavior Analysis therapy to children on the autism spectrum in Seattle. She has also worked with Family Restoration Services in Virginia, under the direction of a psychologist and helped to administer psychological evaluations and parental capacity assessments and prepare written reports to family court judges. Ms. Hansen conducted this work during her studies at Christopher Newport University (CNU). She graduated from CNU with a double degree in Psychology and Sociology with a concentration in Criminology, in 2020.

John Donahue, JD

John Donahue served for thirty-two years with the New York City Police Department holding every rank from cop to chief, concluding his career as the three-star Chief of Strategic Initiatives. He is an appointed Fellow at Rutgers University, Miller Center for Community Protection and Resiliency. As a police executive, Jack led teams to identify solutions to effectiveness and efficiency in policing, prosecutions, school safety and intelligence. He has worked closely with industry and government to develop protective security technologies, promote information security and sharing policies, manage risk in law enforcement and improve citizen-police interactions. As the principal policy advisor in the NYPD he directed academic studies, managed sensitive due diligence and complex investigations and implemented innovative approaches to public safety. He developed the NYPD cyber intelligence center of excellence. Additionally, Jack wrote the first policy guide for police-intelligence operations and was the innovator of the Cyber Intelligence and Counterterrorism conference.
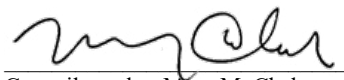
He served on interagency working groups at the federal, state and local level. He has testified before congress and at the state and local levels. His expertise carries over to issues concerning law enforcement accreditation, national
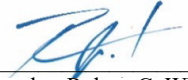
security background investigations, intelligence, information sharing and data protection. Jack served on the FBI's Criminal Justice Information Services Advisory Policy Board from 2008 to 2018 and was the Chairperson from 2016 to 2018. Jack holds an M.B.A. and a J.D. Jack sits on the Board of Directors for the non-for-profit Network Contagion Research Institute.

John Sullivan, PhD

Dr. John P. Sullivan was a career police officer, now retired. Throughout his career he has specialized in emergency operations, terrorism, and intelligence. He is an Instructor in the Safe Communities Institute (SCI) at the University of Southern California, Senior El Centro Fellow at Small Wars Journal, and Contributing Editor at Homeland Security Today. He served as a lieutenant with the Los Angeles Sheriff's Department, where he has served as a watch commander, operations lieutenant, headquarters operations lieutenant, service area lieutenant, tactical planning lieutenant, and in command and staff roles for several major national special security events and disasters. Sullivan received a lifetime achievement award from the National Fusion Center Association in November 2018 for his contributions to the national network of intelligence fusion centers. He has a PhD from the Open University of Catalonia, an MA in urban affairs and policy analysis from the New School for Social Research, and a BA in Government from the College of William and Mary.

APPENDIX B: LEGISLATION

Councilmember Mary M. Cheh	Councilmember Robert C. White, Jr.
Councilmember Brianne K. Nadeau	Councilmember Elissa Silverman
Councilmember Brooke Pinto	Councilmember Janeese Lewis George

A BILL

_____

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

_____

To amend the Attorney General of the District of Columbia Clarification and Elected Term
Amendment Act of 2010 to require the Attorney General of the District of Columbia
to conduct a study to determine whether the Metropolitan Police Department engaged
in biased policing when they conducted threat assessments of assemblies within the
District of Columbia and to grant the Attorney General of the District of Columbia
subpoena power as needed to carry out the study.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this

Act may be cited as the "Bias in Threat Assessments Evaluation Amendment Act of 2021".

Sec. 2. The Attorney General for the District of Columbia Clarification and Elected

Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code §

1-301.81 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 1-301.81) is amended as follows:

1

41   (1) Subsection (a) is amended by adding a new paragraph (4) to read as follows:

42   "(4) The Attorney General shall conduct a study, in collaboration with eligible

43 outside partners as defined in subparagraph (B) of this paragraph, to determine whether the

44 Metropolitan Police Department ("MPD") engaged in biased policing when it conducted threat

45 assessments before or during assemblies within the District.

46   "(A) At a minimum, the study shall:

47   "(i) Examine MPD's use of threat assessments before or during

48 assemblies in the District from January 2017 through January 2021;

49   "(ii) Determine whether MPD engaged in biased policing when

50 they conducted threat assessments before or during assemblies in the District from January 2017

51 through January 2021;

52   "(iii) Provide a detailed analysis of MPD's response to each

53 assembly in the District between January 2017 through January 2021, including but not limited

54 to:

55   "(I) Number of arrests made;

56   "(II) Number of civilian and officer injuries;

57   "(III) Type of injuries;

58   "(IV) Number of fatalities;

59   "(V) Number of officers deployed;

60   "(VI) What type of weaponry and crowd control tactics

61 were used;

62   "(VII) Whether riot gear was used; and

2

63   "(VIII) Whether any of the inviduals involved in the

64   assembly were on the Federal Bureau of Investigation's terrorist watchlist;

65   "(iv) If there is a finding that biased policing has occurred,

66   determine whether MPD's response varied based on the race, color, religion, sex, national origin,

67   or gender of those engaged in the assembly;

68

69   "(vi) Provide recommendations based on the findings in the study,

70   including but not limited to:

71   "(I) If biased policing occurrred, how to prevent bias from

72   impacting whether or not MPD conducts a threat assessment and how to ensure bias does not

73   impact a threat assessment going forward; or

74   "(II) If biased policing has not been found to have

75   occurred, how to ensure that there is not a disparity in MPD's response to all assemblies across

76   all groups, of proportionate size and characteristics, in the District in the future; or

77   "(III) If the study is inconclusive on the occurrence of

78   biased policing, what additional steps must be taken to reach a conclusion.

79   "(B) Any collaborating outside partners shall, at a minimum, meet the

80   following criteria:

81   "(i) Be nonpartisan;

82   "(ii) Have research and legal expertise;

83   "(iii) Have expertise and knowledge of law enforcement

84   practices in the District, bias in policing, homegrown domestic terrorism in the United States,

85   and intelligence data sharing practices;

3

86   "(iv) Have a history of conducting studies and evaluations of law

87   enforcement procedures, regulations, and practices; and

88   "(v) Have experience developing solutions to policy or legal

89   challenges.

90   "(C) The Attorney General shall submit a report on the study

91   to the Council no later than six months from the effective date of the Bias in Threat Assessments

92   Evaluation Amendment Act of 2021 (B24-XX as introduced on XX, 2021).".

93   (b) Section 108 (D.C. Official Code § 1-301.88c) is amended by adding a new subsection

94   (g) to read as follows:

95   "(g) The Attorney General, or his or her designee, shall have the authority to issue

96   subpoenas for the production of documents or materials or for the attendance and testimony of

97   witnesses under oath, or both, as necessary to carry out the investigation pursuant to section

98   101(a)(4).".

99   Sec. 3. Fiscal impact statement.

100   The Council adopts the fiscal impact statement in the committee report as the fiscal

101   impact statement required by section 4a of the General Legislative Procedures Act of 1975,

102   approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

103   Sec. 4. Effective date.

104   This act shall take effect following approval by the Mayor (or in the event of veto by the

105   Mayor, action by the Council to override the veto), a 30-day period of congressional review as

106   provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

4

107   24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.03(c)(1)), and publication in the District of

108   Columbia Register.

5

APPENDIX C: CDU MANUAL ANALYSIS

Convenience Sample

- 2017 Freedom of Speech Rally, DC Antifascist Coalition, and Rally Against Political Violence Manual
- 2017 Million Mask March Manual
- 2017 Presidential Inauguration Manual (No observed threat assesment)
- 2017 Mother of All Rallies Manual (No observed threat assesment)
- 2017 Rolling Thunder Parade and Thunder Alley Manual
- 2018 First Amendment Activities Turkish American National Committee Manual
- 2018 March for Life Manual
- 2018 Million Mask March Manual
- 2018 President Donald Trump State of the Union Address Manual (No observed threat assesment)
- 2018 Unite the Right Manual (Redacted threat assesment)
- 2019 GoGo 4 Justice Demonstration Manual August 14, 2019
- 2019 President Trump State of the Union Address Manual (Redacted threat assesment)
- 2019 Rolling Thunder Parade and Thunder Alley Manual
- 2019 We the People March Manual
- 2019 Women's March Manual (Redacted threat assesment)
- 2020 Enough is Enough GoGo Demonstration Manual
- 2020 First Amendment Demonstrations Manual September 22 - 27, 2020 (No observed threat assesment)
- 2020 March for Life Event Manual
- 2020 White House Siege Operations Manual (No observed threat assesment)
- 2021 First Amendment Demonstrations Manual January 4 - 7, 2021
- 2021 First Amendment Demonstrations Manual January 24 - 31, 2021
- 2021 Presidential Inauguration Manual (No observed threat assesment)

Study Sample

The following tables display the study sample comprised of events with a CDU manual threat assessment that was not redacted.

Event Description

Special events and First Amendment assemblies in the study population ranged in type, purpose, stance, and message. The following tables displays the diversity of events contained in the study sample.

Event/Manual Name	Type of Event	Event Purpose
2017 Freedom of Speech Rally, DC Antifascist Coalition, and Rally Against Political Violence	Permitted Demonstration	Right-Wing Activism, antifascism
2017 Million Mask March Manual	Pop-Up Protest	Anti-Trump, racial justice, & Anti-Fascist
2017 Rolling Thunder Parade and Thunder Alley Manual	Planned Demonstration	Call for the government's recognition and protection of POW & MIAs
2018 First Amendment Activities Turkish American National Committee	Permitted Demonstration	Remembering Turkish victims of Armenian Terror
2018 March for Life Manual	Permitted Demonstration	Anti-abortion
2018 Million Mask March Manual	Pop-Up Protest	Associated with Anonymous Hacktivist Group, corruption in politics, demilitarization, police violence, and self-governance
2019 GoGo 4 Justice Demonstration Manual August 14, 2019	Pop-Up Protest	Anti-Gentrification
2019 Rolling Thunder Parade and Thunder Alley Manual	Special Event w/ First Amendment Assembly Activities	Call for the government's recognition and protection of POW & MIAs
2019 We the People March Manual	Planned Demonstration	Remind elected officials they work for them and articulate that the current administration is a threat to democracy
2020 Enough is Enough GoGo Demonstration Manual	Pop-Up Protest	Anti-Gentrification
2020 March for Life Event Manual	Planned Demonstration	Anti-abortion
2021 First Amendment Demonstrations Manual January 4 – 7, 2021	Planned Demonstration	Pro-Trump groups protesting in support of the ex-president
2021 First Amendment Demonstrations Manual January 24 – 31, 2021	Planned Demonstration & Pop-Up Protest	Pro-Trump groups protesting in support of the ex-president & Anti-abortion protests

Assessment Factors: Potential for Violence/Homeland Security Threat, Projected Crowd Size, Planned Civil Disobedience and Potential for Counter-Protestors

Event/Manual Name	Determination: Potential for Violence/ Homeland Security Threat	Determination: Projected Crowd Size	Determination: Planned Civil Disobedience	Determination: Potential for Counter-Protestors
2017 Freedom of Speech Rally, DC Antifascist Coalition, and Rally Against Political Violence	No	Yes	No	Yes
2017 Million Mask March Manual	No	Yes	Not Discussed	Not Discussed
2017 Rolling Thunder Parade and Thunder Alley Manual	No	Yes	Not Discussed	Not Discussed
2018 First Amendment Activities Turkish American National Committee	No	Yes	No	Not Discussed
2018 March for Life Manual	No	Yes	No	Not Discussed
2018 Million Mask March Manual	No	Not Discussed	Not Discussed	Not Discussed
2019 GoGo 4 Justice Demonstration Manual August 14, 2019	No	Yes	Not Discussed	Not Discussed
2019 Rolling Thunder Parade and Thunder Alley Manual	No	Not Discussed	Not Discussed	Not Discussed
2019 We the People March Manual	No	Yes	Not Discussed	Not Discussed
2020 Enough is Enough GoGo Demonstration Manual	No	Yes	Not Discussed	Not Discussed
2020 March for Life Event Manual	No	Yes	No	Not Discussed
2021 First Amendment Demonstrations Manual January 4 - 7, 2021	Yes	Not Discussed	Not Discussed	Yes
2021 First Amendment Demonstrations Manual January 24 - 31, 2021	Yes	Not Discussed	No	Not Discussed

Assessment Factors: Potential for Terrorism, Observed Threats, Previous Behavior, Previous Violence

Event/Manual Name	Determination: Potential for Terrorism	Manual References Observed Threats	Manual References Previous Behavior	Manual References Previous Violence
2017 Freedom of Speech Rally, DC Antifascist Coalition, and Rally Against Political Violence	No	No	No	No
2017 Million Mask March Manual	Not Discussed	No	Yes	No
2017 Rolling Thunder Parade and Thunder Alley Manual	Not Discussed	No	No	No
2018 First Amendment Activities Turkish American National Committee	Not Discussed	No	No	No
2018 March for Life Manual	Not Discussed	No	Yes	No
2018 Million Mask March Manual	Not Discussed	No	Yes	No
2019 GoGo 4 Justice Demonstration Manual August 14, 2019	Not Discussed	No	Yes	No
2019 Rolling Thunder Parade and Thunder Alley Manual	No	No	No	No
2019 We the People March Manual	Not Discussed	No	No	No
2020 Enough is Enough GoGo Demonstration Manual	Not Discussed	No	Yes	No
2020 March for Life Event Manual	Not Discussed	No	Yes	No
2021 First Amendment Demonstrations Manual January 4 - 7, 2021	Not Discussed	Yes	Yes	Yes
2021 First Amendment Demonstrations Manual January 24 - 31, 2021	Not Discussed	No	Yes	Yes

Assessment Factors: Political Climate Open-Source Intelligence

Event/Manual Name	Manual References Political Climate	Manual References Open-Source Intelligence
2017 Freedom of Speech Rally, DC Antifascist Coalition, and Rally Against Political Violence	No	Yes
2017 Million Mask March Manual	No	Yes
2017 Rolling Thunder Parade and Thunder Alley Manual	No	No
2018 First Amendment Activities Turkish American National Committee	No	No
2018 March for Life Manual	No	No
2018 Million Mask March Manual	No	Yes
2019 GoGo 4 Justice Demonstration Manual August 14, 2019	No	Yes
2019 Rolling Thunder Parade and Thunder Alley Manual	No	No
2019 We the People March Manual	No	No
2020 Enough is Enough GoGo Demonstration Manual	No	Yes
2020 March for Life Event Manual	No	No
2021 First Amendment Demonstrations Manual January 4 - 7, 2021	Yes	Yes
2021 First Amendment Demonstrations Manual January 24 - 31, 2021	Yes	No

APPENDIX D: LITERATURE REVIEW

Review Articles and Books

Belton, I. K., & Dhami, M. K. (2020). Cognitive biases and debiasing in intelligence analysis. In Routledge Handbook of Bounded Rationality (pp. 549). Routledge.

Bender, C. E. (2017). Critical Thinking for Strategic Intelligence.

Borg, L. C. (2017). Improving intelligence analysis: Harnessing intuition and reducing biases by means of structured methodology. The International Journal of Intelligence, Security, and Public Affairs, 19(1), 2-22.

Burcher, M., & Whelan, C. (2019). Intelligence-led policing in practice: Reflections from intelligence analysts. Police quarterly, 22(2), 139-160.

Bureau of Justice Assistance, U.S. Department of Justice. (2013) *Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies.*

Carter, D. L., (2022). U.S. Department of Justice, & Office of Community Oriented Policing Services. *Law enforcement intelligence: A guide for state, local, and tribal law enforcement agencies* (3rd ed.). Department of Justice.

Chang, W., Berdini, E., Mandel, D. R., & Tetlock, P. E. (2018). Restructuring structured analytic techniques in intelligence. Intelligence and National Security, 33(3), 337-356.

CSRC Content Editor. (n.d.). Threat intelligence - glossary: CSRC. NIST. Retrieved August 26, 2022

Harris, A. J., & Lurigio, A. J. (2012). Threat assessment and law enforcement practice. *Journal of Police Crisis Negotiations*, 12(1), 51–68.

Institute for Constitutional Advocacy and Protection. (2020). Constitutional protest guide.

Heuer, R. J. (2019). Psychology of intelligence analysis. Center for the Study of Intelligence.

Hillemann, E. C., Nussbaumer, A., & Albert, D. (2015, September). The role of cognitive biases in criminal intelligence analysis and approaches for their mitigation. In 2015 European Intelligence and Security Informatics Conference (pp. 125-128). IEEE.

Institute for Law and Justice & Community Oriented Policing Services Office. (2007). *Planning and managing security for major special events*. Department of Justice Community Oriented Policing Services Office.

Kirby, S., & Keay, S. (2021). Improving intelligence analysis in policing. Routledge.

Landon-Murray, M. (2017). Putting a little more "time" into strategic intelligence analysis. International Journal of Intelligence and CounterIntelligence, 30(4), 785-809.

Marrin, S. (2008). Training and educating U.S. intelligence analysts. International Journal of Intelligence and Counterintelligence. 22(1), 131-146. DOI:10.1080/08850600802486986

Maegherman, E., Ask, K., Horselenberg, R., & van Koppen, P. J. (2021). Test of the analysis of competing hypotheses in legal decision-making. Applied Cognitive Psychology, 35(1), 62-70.

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

Police Executive Research Forum. (2022). *Rethinking the police response to mass demonstrations: 9 recommendations.*

Smith, C., & Brooks, D. J. (2012). Security science: The theory and practice of security. Butterworth-Heinemann.

Sullivan, J. P., & Lester, G. (2022). Revisiting Domestic Intelligence. *Journal of Strategic Security*, 15(1), 75-105.

Tversky, A. and Kahneman, D. (1974). Judgement under uncertainty: Heuristics and biases, "Science, vol.185, pp. 1124 – 1131.

Werren, C. (2013). Intelligence gathering and the need for control: managing risk in public order policing. *Criminal Justice Matters*, 96(1), 22–23.

Whitesmith, M. (2019). The efficacy of ACH in mitigating serial position effects and confirmation bias in an intelligence analysis scenario. Intelligence and National Security, 34(2), 225-242.

Whitesmith, M. (2020). Cognitive Bias in Intelligence Analysis: Testing the Analysis of Competing Hypotheses Method. Edinburgh University Press.

Whitesmith, M. (2020). Experimental research in reducing the risk of cognitive bias in intelligence analysis. International Journal of Intelligence and CounterIntelligence, 33(2), 380-405.

Werren, C. (2014). Intelligence gathering and the need for control: managing risk in public order policing: Charmian Werren explores the benefits and drawbacks of an intelligence-led approach to policing protest. Criminal Justice Matters, 96(1), 22-23.

Cognitive Biases

1. Belton and Dhami identify belief bias and define it as the tendency to "evaluate the logical strength of an argument based on the plausibility of its conclusion" (Belton & Dhami, 2020).

2. Belton and Dhami define confirmation bias as "remaining overconfident in an initial position, searching for evidence in a way that supports a favored viewpoint, interpreting evidence in a way that favors a preferred viewpoint, and resisting change or insufficiently adjusting confidence in a viewpoint in response to new conflicting evidence or when existing evidence is discredited" (Belton & Dhami, 2020).

3. Belton and Dhami define Explanation bias as "the idea that if you think about/imagine how or why an event may happen, you will then consider it more likely to happen than if you had not thought about it" (Belton & Dhami, 2020).

4. Belton and Dhami state that "fluency effects refer to the idea that information which can be retrieved and processed fluently (e.g., because it is familiar) tends to be preferred and judged more likely and credible than less easily processed information" (Belton & Dhami, 2020). Belton and Dhami argue that when evaluating sources, fluency bias can lead to a preference for evidence received from an expert, even if that expertise is irrelevant to the subject of inquiry(Belton & Dhami, 2020).

5. Belton and Dhami argue that "the framing effect has many facets, i.e., the tendency for risk-aversion when a choice is framed as a gain (relative to the status quo), but risk-seeking when a choice is framed as a loss; making an evaluation based on whether something is described as positive or negative; and choosing to engage in a behavior based on whether participation is described as advantageous or disadvantageous" (Belton & Dhami, 2020). In other words, this cognitive bias is reflected in the tendency to draw different conclusions based on the same information, depending on how the information is presented (Hilleman et al., 2015)

6. Order effects (see Hogarth & Einhorn, 1992) refer to the fact that the order in which information is presented affects its relative importance. Information presented first, and last is particularly biasing.

7. The planning fallacy (Kahneman & Tversky, 1979) is the tendency to underestimate the time (and cost) required to complete a task by overlooking potential difficulties.

8. Overconfidence occurs when an individual's subjective confidence in the accuracy of their judgments is greater than the objective accuracy of those judgments (Belton & Dhami, 2020).

9. Anchoring/adjustment effect is defined as the tendency to rely too heavily on a past reference or one piece of information when conducting analysis (Hilleman et al., 2015).

10. The clustering illusion is defined as the tendency to see patterns where there is none (Hilleman et al., 2015).

11. The availability heuristic is defined as "the tendency to make judgments about the probability of events occurring by how easily these events are brought to mind" (Hilleman et al., 2015, p 127).

12. Base rate fallacy is defined as "the tendency to base judgments on specifics, ignoring general statistical information" (Hilleman et al., 2015, p 127).

13. Groupthink occurs when the option that the majority of the group agrees with is selected or when conflicts within the group are ignored to establish consensus (Pherson & Pherson, 2017). Groupthink "leads to a deterioration of mental efficiency, reality testing and moral judgment resulting from group pressure" (Hilleman et al., 2015, p 127).

APPENDIX E: NATIONAL RESOURCE REVIEW

Connors, E. (2007). Planning and Managing Security for Major Events: Guidelines for Law Enforcement. Washington, DC: Office of Community Oriented Policing Services, US Department of Justice.

Criminal Intelligence Coordinating Council, Recommendations for First Amendment-Protected Events for State and Local Law Enforcement Agencies (U.S. Department of Justice, 2011).

IACP Law Enforcement Policy Center (2019), Crowd Management: Concepts & Issues Paper

IACP, Statement of Chief David Rausch Chief of Police Knoxville Police Department (TN) General Chair Midsize Agencies International Association of Chiefs of Police, World Wide Threats: Keeping America Secure in the New Age of Terror Homeland Security Committee United States House of Representatives

APPENDIX F: INTERNATIONAL RESOURCE REVIEW

Boyle, M., & Vullierme, J.-C., A brief introduction to policing public gatherings A guide for practitioners (2021). Retrieved September 21, 2022

OSCE. (2016). Human rights handbook on policing assemblies. OSCE. Retrieved September 21, 2022

APPENDIX G: TERMS

The following terms reference MPD terminology and definitions reflected by MPD policy.

- "First Amendment activities" means constitutionally protected speech or association, or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble, and the right to petition the government.

- "First Amendment assembly" means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views.

- "Informant" means a person who provides information to the police department motivated by the expectation of receiving compensation or benefit, or otherwise is acting under the direction of the MPD.

- "Intelligence Branch" means the Intelligence Branch, Intelligence Division, or its successor section or unit.

- "Intelligence Branch file" means the investigative intelligence information gathered, received, developed, analyzed, and maintained by the Intelligence Section of the Metropolitan Police Department, pursuant to an investigation or preliminary inquiry involving First Amendment activity.

- "Investigation" means an examination of information that occurs when there is reasonable suspicion to believe that criminal activity or activities are being planned or conducted under the guise of First Amendment activities.

- "Legitimate law enforcement objective" means the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal; provided, that a person shall not be considered to be pursuing a legitimate law enforcement objective if the person is acting based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group.

- "Minimization procedures" means reasonable precautions taken to minimize the interference with First Amendment activities, without impairing the success of the investigation or preliminary inquiry.

- "Preliminary Inquiry" means a basic examination of information arising from an allegation of criminal activity under the guise of First Amendment activities.

- "Reasonable suspicion" means a belief based on articulable facts and circumstances indicating a past, current, or impending violation of law. The reasonable suspicion standard is lower than the standard of probable cause; however, a mere hunch is insufficient as a basis for reasonable suspicion. A suspicion that is based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group is not a reasonable suspicion.