



HUNTSVILLE
The Star of Alabama

**Report to
Huntsville City Council**

**Requested Feedback on
Huntsville Police Citizens Advisory
Council Report - April 22, 2021**

**Submitted
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Feedback on HPCAC Report, dated April 22, 2021

On April 22, 2021, the Huntsville Police Citizens Advisory Council (HPCAC), by and through counsel (Lightfoot, Franklin & White, LLC), presented a report to the City Council of events surrounding protests and demonstrations that occurred in downtown Huntsville on June 1 and 3, 2020.

Operational Aspects of the Events

The protest events of June 1 and June 3 involved significant crowds of people spread broadly across downtown Huntsville. These events created a very complex operational environment for the Huntsville Police Department (HPD) and its partner agencies seeking to ensure the safety of those directly involved in the protests as well as the general public. The HPCAC report seeks to provide some clarity into HPD's response, though its reliance on certain assumptions led to some inaccuracies. Nevertheless, the report highlights a number of ideas worthy of exploration, and those ideas deserve focus from our law enforcement agencies. The focus areas can be best categorized in the following ways:

Event Permitting/Communication Processes

The City receives and processes numerous special event permits every month. HPD is the primary entry point for the requests and the department manages the multi-department review and approval process on behalf of the City. Both the June 1 and 3 events were allowed to request and receive permits on shorter than standard timelines. The regulatory requirement is for this process to occur no less than 20 days prior to the event but HPD allowed both to move forward despite having missed the regulatory deadline. This was a judgement call made by HPD that reflected its deep understanding of the concerns being expressed around the country for law enforcement activity and techniques and general frustration with disparity in criminal judicial systems. HPD leadership worked with both organizers to ensure they were able to move forward with their events in a safe manner. This compressed planning and permitting timeline was particularly true for the June 3 event and was the primary focus of concern raised by the HPCAC.

It is important to note that both event organizers conducted their events in accordance with the permit. What failed to occur was the gathered crowds departing the area in an orderly,

lawful manner after the permitted events were concluded. The unpermitted events that followed were the focus of the HPCAC review, particularly the June 3 event.

The June 3 event was organized by the Madison County chapter of the NAACP. There appears to be some who believed it was being organized by the state level of the organization and the HPCAC focused much of their analysis on comments made by leadership at the state level. To be clear, the state-level leadership referred to and quoted in the HPCAC report is not who requested the permit and was not who HPD worked with in getting the event organized and permitted. But they did contribute to much of the confusion and misinformation spread in the hours leading up to the event and even while the event was on-going. The challenges created by this confusion offer lessons to be learned.

Ensuring the full resourcing for safe events requires significant planning and collaboration with event organizers. In an attempt to be accommodating, HPD worked with our local NAACP chapter to pull the event together within about 72 hours of the event. The permit was completed a day before the event and much of the planning for the event was still being completed on the day of the event. While there had been discussion about the possibility of a march as part of the event, the permitted event did not include a march. Unfortunately, some people from outside the organizing body communicated through a variety of means erroneous timelines and activities to prospective attendees. It became obvious at the conclusion of the permitted event that many in attendance believed a march was planned. Recognizing this, HPD allowed the crowd to conduct a brief march and allowed them to gather for a period of time on the west side of the courthouse in order to express their views.

The failure of organizers to properly advertise their event and their failure to clear participants from the event area led to the activities that followed. This could have been mitigated or eliminated had the regulatory planning and permitting timelines been upheld. This would be true for any of the many special events hosted in Huntsville each month and is particularly the case for such a large event.

Action: The City officials working the special event process will continue to work very closely with event organizers to ensure they have completed their plans and that City departments have sufficient time to properly resource our supporting tasks. While HPD's team is to be commended for collaborating with the NAACP organizer on such short notice, compressing the timeline to such an extreme should have been avoided in the future, to the extent possible and reasonable. It is critically important for all involved that both the organizing bodies and the supporting City departments have sufficient time to complete the event planning and put in place all the required logistics, security, and communications resources.

Intelligence Gathering and Analysis

Development and training of best practices for intelligence usage has always been the goal of the North Alabama Multi Agency Crime Center (NAMACC) and always will be. This type of organization and facility within local law enforcement agencies is a relatively new concept. It relies on continuously evolving technologies and analysis techniques. It cannot succeed if its equipment and/or training has become outdated. The idea put forward by the HPCAC that NAMACC needs to continue pursuing training, partnerships, and modernization is well-received. It was true prior to June 1, 2020. It has been true every day since June 1, 2020, and it will be each day of NAMACC's existence. Continuous improvement and modernization is the culture of the organization.

In June of 2020, the NAMACC, a new and evolving HPD organization, was minimally staffed with the facility still under construction. The volume of data coming in from numerous law enforcement agencies and media sites across the country after the George Floyd riots was staggering. Although valiant efforts were made to verify intelligence and follow leads, time was of the essence as HPD and other law enforcement agencies tried to quickly prepare for the possibility of looting, destruction, fires, and other violence to arrive in North Alabama, especially after an eventful and destructive number of days in many similarly sized cities, including Birmingham, in the preceding days. The volume only expanded in the 48 hours prior to the June 3 event. The challenge of converting pieces of data into useful information was only exacerbated by the extremely short timeline between event permit approval to kick-off of the event.

Focusing forward, it is important to reflect on what intelligence is and how it is best used during the execution of an event. In the intelligence development process, gathered data is analyzed, used to direct the targeted collection of more information, and hopefully permits the analyst to paint an accurate picture of what to expect in a particular event. Rarely does that picture prove in hindsight to be completely accurate. In events like those reviewed in the HPCAC report, the pre-event intelligence picture, coupled with prudent risk assessments, serves to inform decisions on what assets to have available and where to best position those resources. And that is exactly how the decision-makers within HPD used the information. HPD was prepared for a significant crowd generally intent on peacefully protesting, but with certain bad actors interspersed potentially intending to do harm. That is what occurred during the event. HPD had the resources necessary to manage the event and did have additional resources positioned based on the intelligence picture but did not call upon those teams because they were unnecessary.

The idea that tactical decisions made during the event were based on some intelligence gathered prior to the event is not accurate. Intelligence and departmental standard procedures

informed the readiness level of the teams, but each decision made during the event was based on what was observed from the crowd, on the ground, in real time.

Importantly, the capability of the NAMACC to bring technological solutions to the event for monitoring crowd and individual behaviors allowed the incident and tactical commanders to maintain a much clearer operational picture of the event. The ability to view activities from multiple angles and altitudes substantially improved their ability to make fully informed decisions. This technology-driven enhanced situational awareness represents a significant step forward in HPD's ability to safely manage critical events.

Action: We will continue to seek the most modern technologies available to support law enforcement activities. The advantages of these tools can play an important role during special event management but are exponentially more valuable when conducting counter-criminal operations in the routine conduct of our public safety mission.

Training

HPD invests significant resources in training our officers for all law enforcement critical tasks. Entry-level training at our academy far exceeds the requirements set by the State and subsequent in-service training is also scheduled for additional tasks and hours exceeding the requirement. Additionally, and particularly relevant to the June 1 and 3 response, specialty units like the Incident Response Team (IRT) conduct regular training on the myriad of scenarios they might face. It should be noted that in the years leading up to 2020, HPD's training for these type events was led by an HPD captain who was a nationally certified trainer often detailed to federal agencies for instruction to other agencies in the region. He also served as incident commander on both June 1 and 3.

Despite the significant training we conduct, HPD will always desire and look for opportunities to conduct more. Furthermore, finding additional opportunities for joint training exercises with partner agencies has always been and will continue to be a high priority. In fact, since June 2020, HPD and MCSO have conducted multiple joint training events and multiple law enforcement operations, including the monitoring of demonstrations in and around the downtown area.

There are a few aspects of the HPCAC report related to training that deserve direct response here. First, the report repeatedly stated that the HPCAC was denied access to HPD training records. That claim is incorrect. In fact, HPD communicated with the reviewing team at Lightfoot, Franklin & White that the records were available and that they were welcome to schedule a time to review those records. The challenge was that the requested records totaled approximately 30,000 pages in length. We believe that represents a volume far exceeding their

capacity to meaningfully review for the purpose requested but it certainly would have highlighted for them just how extensively our department is trained. While the criticism they voiced about transparency is not valid, their broader point about HPD seeking increasing opportunities for training is well-received and echoed regularly within HPD as the leadership works continuously to create those opportunities.

Second, the report used a single quote of an officer heard on his body cam saying, “We weren’t trained for this,” or words to that effect, attempting to extrapolate an idea that the officers deployed by HPD that night were not well-trained for the event. This aspect of the report offers a good lesson on how a short video snippet can lead the analysis in an inaccurate direction. In fact, that quote – when listened to in its entire context – tells a different story. One of the challenges for HPD during the event was the very large size of the crowd, not only the number of people but also how widely spread they became around the downtown area. To overcome the time/distance factors of moving large, dispersed groups of people without making direct physical contact, officers did not walk shoulder to shoulder as trained but rather walked with 20-30 feet between them at times. Also, when teams of officers needed to be relocated from one hot spot to another on the opposite side of downtown, leaders quickly adapted trucks and trailers to move officers. It was a unique solution that they certainly had not previously trained for and did present hazards to the officers. Leaders adapted on short notice, mitigated the risks, and completed the required movement safely. The officer was 100% correct when he stated that they had not previously trained for that particular transportation or crowd movement technique.

Action: It is important that we have officers trained on as many different scenarios as possible and that we have leaders ready to find unique solutions to unique circumstances. Training does and must continue to challenge officers with widely varying scenarios to prepare them for the ever-changing, evolving situations encountered on the street. It is also important that as we reflect on events and analyze them for departmental improvements that our analysis is well-informed and considers the full context of situations.

Crowd Dispersal Techniques

The decision to disperse the crowd and then the techniques employed to do so are the most commonly voiced concerns from certain members of the public. We will explore each in detail here.

HPD leadership takes very seriously the constitutional rights of all our citizens. The right to assemble and express one’s opinions is foundational to the liberties enjoyed by every citizen of our nation. Law enforcement agencies across the country are routinely employed to protect

those rights for various groups, even when the police themselves are the target of the messages expressed. HPD understood very well the nature of the protests planned for those nights, which informed the sensitivity in their approach to the situation. For example, allowing a short-notice permit, allowing a period of protest blocking the streets even after expiration of the permit, and dispersal techniques that minimized police-citizen physical interaction and minimized arrests. The idea expressed by some that HPD did not understand or appreciate that they were the targets of the protest is patently false.

The decision to formally declare the assembly unlawful and then subsequently disperse those who refused to depart in accordance with the lawful orders of the Sherriff and Chief of Police was based solely on the circumstances unfolding on the ground and made at a time to provide the safest means to accomplish the dispersal.

A number of people have stated the protests were peaceful. Arguing for or against that point is not particularly fruitful here because it requires a common understanding of the word "peaceful," which clearly has differing definitions depending on one's point of view. But more importantly, the decision to disperse these crowds was not made based on how peaceful or not the crowd was behaving. Every objective observer of the event in real time or in review of the various recordings will note that some individuals behaved peacefully and some did not. The dispersal order was issued because the assembly was unlawful. It was unlawful because participants were blocking streets and other public facilities without permit. They were taking unto themselves exclusive use of public property, denying access to other members of the public who had equal right to those public facilities. Whether or not they were doing that in a peaceful manner was irrelevant.

The timing of the decision was informed by the leadership's judgment of the safest way to compel the dispersal. The goal was to accomplish the dispersal during daylight when better visibility creates the safest environment for the citizens and law enforcement. Despite this attempt, the resistance of the crowd resulted in the event continuing into darkness. There is certainly room to argue that the assembly could have and should have been declared unlawful as soon as the crowd departed the permitted event and began blocking streets. On both days, the Chief understood emotions were high and people needed the opportunity to express their concerns and, on June 3, he understood that some members of the crowd had been misinformed and genuinely believed the event permit continued longer into the evening. He accommodated an unpermitted march and a period of post-march demonstration, seeking a balance between their desire to express their views and the rights of the community to access and use its streets for their intended purpose. Ultimately, our citizens' right to exercise First Amendment protected speech in public spaces do not supersede the rights of their fellow

citizens. Adherence to our special event permitting processes has proven to be an effective way to manage this issue.

As we write this document in June 2021, it should be noted that our community has shown repeatedly that it can balance the competing interests in this regard by both conducting demonstrations or protests and allowing free access to public infrastructure. In fact, on June 5, 2020, a large group assembled in downtown and conducted a multi-hour protest without permit, obeying all the relevant laws. While HPD had officers present to ensure the protesters' safety, it required no law enforcement intervention to compel compliance with laws.

As to the techniques employed, they reflect the intent to conduct the operation as safely as possible for all involved. We realize that many believe the irritants used are extremely invasive. But an understanding of the alternatives indicates that view is mistaken. The purpose of the irritants is to encourage people to depart the area and to do so without physical contact between the individual and law enforcement officials. What we have seen play out in other jurisdictions around the country, where officers do not have access to use of irritants, they instead must physically force the crowd or individuals to move. They are typically doing this with hard shields or batons. While these techniques are generally approved, they introduce the greatest chance of physical injury and we have seen that outcome in many of those circumstances.

On June 1, the initial movement to force the crowd that had pierced the MCSO barricades on the courthouse steps required physical contact, conducted in accordance with our training and standards. In the conduct of that initial movement, a protester and police officer fell as a direct result of their opposing efforts. Note: The Lightfoot report incorrectly describes this event as an officer diving on the protester. Multiple videos of the event this description demonstrate the inaccuracy of the "diving on" description but regardless, it serves as a great example of why HPD sought to avoid that direct, physical contact if possible. They were successful in making that initial push of the crowd off the courthouse on June 1 the only time this technique was required.

Subsequent to that brief period on June 1 and throughout the dispersal process on June 3, HPD successfully deployed irritants to maintain distance between the protesters and law enforcement personnel. They were employed them in a slowly escalating fashion to give the protesters ample opportunity to fully understand the requirement to comply with lawful orders and depart the area. Only those who refused to comply ultimately had significant exposure.

Action: Use of irritants, as noted by the HPCAC, is a widely used technique. It proved effective in accomplishing the intent and is why the events were concluded with so few injuries and arrests. HPD did not and does not employ these types of tools lightly. It is an area of their

operations that requires constant training and vigilant focus on proper employment. Now that all the records/recordings of the events have been returned to HPD from HPCAC's counsel, the chain of command continues its review of all aspects of each officer's performance.

Multi-Agency Planning and Operations

Operating adjacent to and interspersed with another law enforcement agency that might have differing equipment, standard procedures, and training levels is always challenging. It is particularly so in such a fluid event like a large demonstration. Each individual in the crowd can make their own personal choices about how they behave. The dynamics of a crowd result in it taking on a personality of its own and those characteristics can quickly change in the midst of the event. Differing standard operating procedures amongst the agencies can make reaction to unanticipated crowd behavior very challenging to react to in real time. These challenges highlight how critically important it is for partner agencies to train jointly, as discussed previously, but also to exercise their planning and pre-event briefing/rehearsal procedures.

The post-permitted event activities on June 1 were largely spontaneous. Though there had been some intelligence indicating an intent by some to remain on-site and conduct a demonstration, the scale and aggressiveness of the crowd evolved quickly into a more critical event than anticipated. There had not been significant interagency pre-planning at that point. Hindsight certainly indicated there should have been and that lesson learned informed the approach in preparation for the June 3 event, albeit on very short notice.

Approximately two hours before the start of the NAACP event on June 3, leadership from all the involved agencies, plus others like the U.S. Attorney's Office, conducted a pre-event coordination meeting. While the briefing covered the major components of the plan and healthy cross-talk amongst the agencies resolved areas of uncertainty, the compressed timelines – as discussed in the Permitting Process section above – weakened the outcome of the briefing. There was insufficient time to delve as deeply as necessary. For a preplanned, known event, we should not allow that to occur in the future. The first step is to more consistently enforce the regulatory timelines for permitting of events as previously discussed. Secondly, conducting the pre-event briefings with all tactical commanders prior to deployment of event support resources will occur for all HPD-led events and will follow thorough checklists covering all aspects of the tactical plan, array of assets, and technologies/equipment to be employed.

Action: Providing public safety to our community is accomplished most effectively and efficiently when done in partnership with federal, state, and other local agencies. Each bring capabilities to the table that strengthen the team approach to securing our citizens and their

property. But, it is critical we train together, exercise our planning and decision-making functions, and codify the supporting relationships between our agencies. HPD remains committed to growing and modernizing each of those things.

Administrative Aspects of the HPCAC review

During the review process, the City relied on the Legal Department to be a conduit of information when requested by the review team. The Legal Department documented their requests and catalogued the responses. During this process, certain aspects of their requests could not be fulfilled. Unfortunately, the report provided by the HPCAC's counsel inaccurately characterized the response provided by the City. The following is provided to correct the record on these items:

Availability of officers for testimony

The allegation that the City did not make officers available for testimony is not accurate. The HPCAC's counsel requested testimony from a specific list of officers and requested the City to compel the officers to testify. That is the important distinction to note here. The City did make the officers available, did notify those officers of the review team's desire to speak with them, but did not compel them in violation of their constitutional rights to testify. Transparency and collaboration with investigative teams is extremely important, but that cannot be achieved by trampling on the constitutional rights of our employees.

Access to HPD officers' training records

On September 24, 2020, a large box of materials was hand-delivered to the Lightfoot Law Firm in Birmingham that included documents and records that were responsive to HPCAC's massive Request for Production. The large box held training and instruction materials as well as a list of personnel authorized to provide training. Additionally, a 4-terabyte external drive with training materials was sealed in an envelope inside of the box. Since one request was for individual training records, which are stored in paper form at the police academy, HPD offered to schedule an on-site review of the records. An excerpt from the message Lightfoot received follows:

Training records for HPD officers are maintained in paper form in separate and individualized training files. An individual audit of each individual officer's file is required to respond to this request, which is unduly burdensome for an HPD employee to complete without interfering with the daily operation of the Department. Accordingly, individual files, including certifications and training records, will be made available to the HPCAC for an onsite review at an agreed upon time and date."

Neither Counsel for HPCAC nor any member of HPCAC contacted either the City Attorney's office or HPD to schedule the onsite review of the individual records.

HPD responsiveness to other document requests

On September 24, 2020, a large box of materials, including an external hard drive and additional jump drive, was hand-delivered to the Lightfoot Law Firm in Birmingham, including over 1,800 pages, documents and records and over 300 hours of video recordings, that were responsive to HPCAC's massive Request for Production. In multiple emails between the City Attorney's office and the attorneys for the HPCAC, the City requested that it be notified if additional information was needed or requested. HPD is not aware of any instances where categories of documents were refused to be produced.

Conclusion

The City of Huntsville and its Police Department understand and appreciate the delicate balance between preserving the safety and security of the whole of the community while allowing the free exercise of First Amendment rights by groups that might have opposing views of the department or of other community groups. HPD has many years of experience managing special events, large and small, including marches and demonstrations, even those where police themselves were the subject of the protest. They have on numerous occasions provided safety to two opposing groups demonstrating against each other from opposite sides of the street. Each of these situations is unique and each requires professionalism on the part of our officers. Each of these events provide experiences and lessons learned that inform our policies, procedures, equipping, and training. The events of June 1 and 3, 2020, are no different. The events provided significant lessons learned, as described above, that will inform much of HPD's training going forward and will have long-lasting impact on approaches to event planning, communication with event organizers, departmental resourcing, and tactical decision-making.