



# NISKANEN C E N T E R

## THE ROLE OF THE U.S. GOVERNMENT IN THE LAW ENFORCEMENT RESPONSE TO PROTESTS

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The Niskanen Center is a 501(c)3 issue advocacy organization that works to change public policy through direct engagement in the policymaking process.

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## Executive summary

**P**olicing protests requires law enforcement to accomplish two primary goals that are sometimes in tension with one another: protecting the constitutional right of free speech and assembly and preserving public safety. Law enforcement agencies are expected to apply proportional and impartial strategies and tactics to accomplish both imperatives. The law enforcement response to protests is primarily a local function in the United States, but the federal government plays two key roles in shaping that response, one direct and one indirect. The principal *direct* role involves federal law enforcement agencies responding to protests on federal property, in and around federal buildings, and when called on to provide mutual aid or other forms of assistance in communities. The principal *indirect* role involves training state and local police on how to handle protests and other crowd events. Several crowd policing events in the past two years have revealed related deficiencies in the manner by which federal agencies fulfill these two roles. Those deficiencies include:

- Reliance on ill-conceived and outdated training, strategies, and tactics among federal law enforcement agencies charged with policing crowds;
- Guidance to state and local law enforcement agencies that is similarly inadequate and often lacks a basis in research evidence; and
- Patterns of disproportionate response, including tendencies to both over- and under-respond to public safety threats posed by crowds.

Crowd policing has undergone two overhauls in the past 50 years. First, some law enforcement agencies shifted from the heavy-handed tactics of the 1960s and 1970s to negotiated management of crowds, which involved communication and coordination with protesters to ensure free speech and assembly *and* public safety. Then, after a decade of disastrous crowd control efforts, from the Los Angeles riots to the Seattle World Trade Organization protests, many law enforcement agencies readopted confrontational techniques, which remain central to protest responses today. These techniques include:

- Deployment of military tactics and equipment.
- Use of force and arrests as primary means of crowd control.
- Emphasis on controlling space and access .
- Sophisticated surveillance of protesters and interagency cooperation.
- Unwillingness to communicate or negotiate with protesters.

These tactics are rooted in a view that all protests and similar crowd events are volatile and have the potential to become serious public safety threats. This view tends to lead law enforcement agencies to treat crowds as homogenous entities and adopt an adversarial approach to policing them. [Recent research](#) that draws from law, psychology, and criminology suggests that, on the contrary, police have an interest in fostering a cooperative relationship with protestors and other, similar crowds. To this end, four principles for crowd management emerge:

- Education - Police should work to understand the composition of protests, particularly

their internal social dynamics, values, and goals.

- Facilitation - Protestors have legitimate rights, and police should work to minimize violence by facilitating peaceful speech and assembly.
- Communication - Through deliberate and clear communication, police can understand the goals of protestors, prevent conflict, and quickly identify threats to public safety.
- Differentiation - Police should focus their enforcement efforts on members of crowds who actively endanger safety, rather than uniformly suppressing all protestors.

To remedy deficiencies in its response to protests and similar crowd events, the federal government should conduct a comprehensive review of the relevant training and policies of every federal agency that engages in crowd control, crowd management, or the response to civil disturbances. That review should focus on the extent to which the training and policies are consistent with current research evidence and best practices. The federal government should also work with researchers to begin testing and evaluating changes to training, policies, and operations. This will involve carrying out honest after-action reviews that seek to identify which approaches worked well and which ones require further adjustments. In following these steps, the federal government can take a leadership role in adopting, testing, refining, and modeling evidence-based practices for handling crowd events in the most judicious and effective manner.

## 1. Introduction

The law enforcement response to protests is primarily a local function in the United States. Local police and sheriffs' departments determine their own strategies and tactics for responding to protests in their communities. If those protests occur on state property or in unincorporated areas that do not have local law enforcement coverage, or if they involve a request for mutual aid, state police may become involved. The direct involvement of the federal government in responding to protests is rare, though there is some evidence that it may be expanding. A large and growing scientific literature has examined the role of local and state governments in regulating and responding to protests. However, little is known about the role of the federal government. This report examines some of the ways in which the federal government influences or participates in the law enforcement response to protests in U.S. communities.

The federal government plays two different roles in shaping the law enforcement response to U.S. protests, one direct and the other indirect. The principal *direct* role involves federal law enforcement agencies responding to protests on federal property, in and around federal buildings, and when called in to provide mutual aid or other forms of assistance in communities. Another direct role, which I do not examine here, involves federal prosecutors charging protesters, in some cases deliberately sidestepping state-level prosecution in an effort to impose harsher sanctions. In addition to these direct responses to protests, the federal government also plays an *indirect* role. The principal indirect role involves training state and local police on crowd management, crowd control, civil disturbances, and other topics associated with crowd events. Other indirect roles, which I do not examine here, include providing intelligence reports associated with protests to state and local law enforcement agencies, and working with these agencies to guide their activities during National Special Security Events.

The federal government's role in responding to protests raises a variety of issues worthy of careful thought in a nation that values freedom of speech and assembly. One such issue involves the role of the federal government in committing or indirectly facilitating constitutional violations. There are several recent examples of federal agencies responding to protests in a heavy-handed and unskilled manner that escalated tensions and promoted conflict and violence. A related issue involves the federal government inserting itself into law enforcement matters that are typically handled by state and local governments. A third issue, evidenced by the Capitol insurrection, involves the failure of federal law enforcement authorities to protect federal buildings, grounds, and personnel. Even when the federal government does not respond to protests directly, the training it provides to state and local law enforcement agencies about how to handle protests is problematic in a number of ways. The federal government should be leading the way in promoting thoughtful, innovative, and evidence-based law enforcement approaches for managing protests, not modeling or disseminating outdated, ineffective, and unconstitutional policies and practices.

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This report begins by discussing the federal government’s *direct* involvement in policing protests. It then examines the government’s *indirect* role through training state and local law enforcement agencies. It reviews the federal government’s direct and indirect roles in policing protests through the lens of empirical research on the nature of crowds and the law enforcement response to crowd events. The report closes with recommendations for improving the federal government’s role in policing U.S. protests. The goal is for the federal government to begin to take the lead on promoting and modeling fairer and more effective *evidence-based* policies and practices for managing protests.

## 2. Direct federal involvement

Federal law enforcement agencies sometimes respond directly to protests. The most common direct response of the federal government is to protests that occur in, on, or around federal buildings and lands. For example, many federal law enforcement agencies are responsible for policing protests that occur in Washington, D.C., because it is a federal district. These include the Washington, D.C., Metropolitan Police Department (MPD), which has primary responsibility for policing protests that occur in most areas of the city. The U.S. Park Police handles protests that occur in the city’s many parks, the U.S. Capitol Police handles protests that occur in or on Capitol buildings and grounds, the U.S. Secret Service handles protests that occur at the White House Complex and other specific buildings and grounds, and the Federal Protective Service handles protests that occur in or around many other federal facilities. Several other federal law enforcement agencies play a direct role in responding to protests in and around the District of Columbia (and elsewhere). Moreover, the presence of so many federal law enforcement agencies means that multiple agencies are often simultaneously responsible for handling protests that occur in the city.

The nature and quality of the response to protests in Washington, D.C., by these and other federal agencies has varied widely over time. For example, thousands of protesters converged on the capital in April 2000 to protest a meeting of the International Monetary Fund and the World Bank. Police arrested approximately 1,300 people, including many who had committed no crime. A class action lawsuit resulted in a settlement of more than \$13 million and the expungement of the criminal charges for everybody who was arrested.<sup>1</sup> In another well-known incident that occurred in 2002, the MPD and the U.S. Park Police surrounded Pershing Park and arrested more than 400 people, including journalists, legal observers, passersby, and protesters demonstrating against the World Bank. A class action lawsuit resulted in a settlement of more than \$8 million.<sup>2</sup> In response to one of the lawsuits resulting from this event, “the District of Columbia accepted a settlement agreement and consent order that included a personal apology by the D.C. Police Chief, the payment of substantial damages to those arrested, and significant limits on police authority in handling demonstrations.”<sup>3</sup>

In the aftermath of these and other events, the District of Columbia’s City Council launched an in-depth investigation of the MPD’s policies and practices for handling protests. The investigation

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1. *Becker et al. v. District of Columbia et al.*, no. 01-CV-811 (D.D.C. 2009).

2. *Barham et al. v. Ramsey et al.*, no. 02-CV-2283 (D.D.C. 2007).

3. Ralph Temple, “The policing of demonstrations in the nation’s capital: Legislative and judicial corrections of a police department’s misconception of mission and failure of leadership,” *University of the District of Columbia Law Review* 8, no. 1 (2004), 3.

by the City Council’s Judiciary Committee found that MPD had used undercover officers “to infiltrate political organizations in the absence of criminal activity;” engaged in a pattern and practice of “misrepresentation and evasion” with regard to the MPD’s actions during the protests; repeatedly taken preemptive enforcement actions against demonstrators, including arrests; failed to credibly police its own officers “for misconduct associated with demonstrations;” and failed to “acknowledge and to protect the rights of individuals to privacy, and to free speech and assembly.”<sup>4</sup> In response to these and other disturbing findings about the MPD’s conduct during the protests, the Committee recommended legislation to establish clear guidelines for handling future protests. That legislation, entitled the “First Amendment Assemblies Act,” which was part of the larger “First Amendment Rights and Police Standards Act,” was enacted in 2005.<sup>5</sup> One scholar concluded that the legislation “exposed bad practices and shortcomings and restored a proper balance between law enforcement and liberty.”<sup>6</sup>

For many years following these events, the MPD came to be viewed as a national leader in the response to protests. That changed on January 20, 2017, when Donald Trump was inaugurated as U.S. president. On that day, police in Washington arrested more than 200 people following a protest that devolved into a riot, including instances of arson and serious property damage. The Metropolitan Police Department’s on-scene commander later acknowledged that in ordering arrests, he “wasn’t differentiating who was demonstrating and who was rioting.” An independent review of the incident concluded that some officers “took unnecessary actions against demonstrators who posed no immediate or direct threat to law enforcement, themselves, or other demonstrators.”<sup>7</sup> Federal prosecutors charged many of the arrestees with serious felonies regardless of whether there was evidence to support these charges. Only 21 of the arrestees pleaded guilty, and the remainder were either acquitted at trial or had their charges dropped.<sup>8</sup> In April 2021, the city agreed to pay \$1.6 million to settle lawsuits associated with the police response to the inauguration protests.<sup>9</sup>

In the summer of 2020, police in Washington, D.C., responded to numerous racial justice protests associated with the murder of George Floyd and the Black Lives Matter movement. One of the most well-known protests occurred on June 1 at Lafayette Park, a 7-acre federal property located across the street from the north lawn of the White House and managed by the National Park Service. Protests in Lafayette Park began on May 29. That evening some protesters vandalized property and threw objects at police officers, injuring several. One U.S. Park Police (USPP) officer was struck in the head by a brick and had to be hospitalized. The protests continued on May 30 and 31, with certain protesters continuing to damage property and assault officers. From May 29 to May 31, 49 USPP officers were injured during the protests.<sup>10</sup>

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4. Kathy Patterson, “[Report on Investigation of the Metropolitan Police Department’s Policy and Practice in Handling Demonstrations in the District of Columbia](#),” (Council of the District of Columbia, Judiciary Committee: March 24, 2004).

5. First Amendment Assemblies Act of 2004 (Apr. 13, 2005, D.C. Law 15-352, § 101, 52 D.C.R 2296).

6. Mary M. Cheh, “[Legislative oversight of police: Lessons learned from an investigation of police handling of demonstrations in Washington, D. C.](#),” *Journal of Legislation* 32 (2006): 1-21.

7. “[2017 Presidential Inauguration First Amendment Assembly Independent Law Enforcement Review](#)” (Police Foundation, July 2018).

8. Scott Michelman, [letter](#) to Department of Justice Inspector General Michael Horowitz, March 17, 2019.

9. Michelle Stoddart, “[Washington to pay \\$1.6M to settle lawsuits after protests at Trump’s 2017 inauguration](#),” ABC News, April 26, 2021.

10. Office of Inspector General, U.S. Department of the Interior, *Review of U.S. Park Police actions at Lafayette Park* (June 8, 2021).

On May 30, the USPP and U.S. Secret Service established a unified command “to coordinate the law enforcement response to the protests near the White House and Lafayette Park.”<sup>11</sup> On June 1, the U.S. Secret Service procured fencing to establish a secure perimeter around Lafayette Park. The USPP and the Secret Service decided to clear the park to allow for the installation of the fencing. These two agencies, as well as law enforcement partners from five additional agencies,<sup>12</sup> launched an operation at 6:23pm to begin clearing the park. Law enforcement used a variety of weapons including batons, PepperBalls, Stinger ball grenades, flash bang grenades, and inert smoke canisters in their efforts to disperse the crowds. The operation was completed by 6:50 pm. Numerous protesters and journalists alleged that the police used excessive force in their efforts to clear the park. A Washington, D.C., resident who attended the protest testified before the House Natural Resources Committee that police began pushing him and other peaceful protesters and attacking them with less-lethal weapons (that is, weapons that have a lower likelihood of resulting in death than conventional weapons).<sup>13</sup> A viral video depicted Australian journalists who clearly identified themselves as press being assaulted by officers.<sup>14</sup> One journalistic account referred to police actions as a show of force that “injected danger into what had been a calm protest as those in the street fled mounted police to avoid being trampled, struck by projectiles or gassed.”<sup>15</sup>

With the park cleared, President Trump left the White House at 7:01 p.m. and walked through the park to St. John’s Episcopal Church on 16th Street. He arrived at 7:09pm, where he was famously photographed holding a Bible in front of the church. Four days later, Washington, D.C., Mayor Muriel Bowser renamed that portion of 16th Street Black Lives Matter Plaza. In response to the recent actions of federal law enforcement agencies on that same street, Mayor Bowser told the crowd, “In America, you can peacefully assemble.”<sup>16</sup> A review of the police handling of the protest by the Inspector General of the U.S. Department of the Interior found that “the USPP had the authority and discretion” to clear Lafayette Park and the surrounding areas.<sup>17</sup> However, although the USPP made three announcements instructing the crowd to clear the area, these announcements were not sufficiently audible. As a result, the USPP did not provide protesters with clear warnings to leave the park before the police began using force against them. The Inspector General’s report recommended that the U.S. Park Police establish a policy that includes “detailed dispersal warning procedures, such as the number of warnings required, the timing of the warnings, the required content of the warnings, and how the USPP will help ensure that everyone, including all law enforcement officials and the individuals they are trying to disperse, can hear the warnings.”<sup>18</sup>

Moreover, coordination issues between the various law enforcement agencies involved in the

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11. *Ibid.*, p. 5.

12. The unified command structure was led by the U.S. Park Police and included five other law enforcement agencies: the Arlington County Police, the D.C. National Guard, the Federal Bureau of Prisons, the Federal Protective Service, and the U.S. Marshals Service. The Washington, D.C., Metropolitan Police did not play a role in clearing Lafayette Park.

13. U.S. House of Representatives, Committee on Natural Resources, “[Oversight hearing on the U.S. Park Police attack on peaceful protesters at Lafayette Square](#),” June 29, 2020.

14. Courtney Pomeroy, “[Australian reporter attacked by Park Police during clearing of Lafayette Square testifies](#),” Associated Press, June 29, 2020.

15. Jonathan Allen et al., “[Police, National Guard clash with protesters to clear streets before Trump photo op](#),” NBC News, June 1, 2020.

16. Fenit Nirappil et al., “‘Black Lives Matter’: In giant yellow letters, D.C. mayor sends message to Trump,” Washington Post, June 5, 2020.

17. *Review of U.S. Park Police actions*, p. 23. See note 10.

18. *Ibid.*, p. 31.

operation may have led to confusion during the operation and “the use of tactics that appeared inconsistent with the USPP incident commander’s operational plan.”<sup>19</sup> For instance, Secret Service officers deployed on H Street before the first dispersal order was given. The Inspector General’s report concluded that “the Secret Service’s early deployment drew additional protesters to the east end of H Street, increasing tensions between law enforcement and the protesters.”<sup>20</sup> Similarly, civil disturbance units from the USPP and the Arlington County Police Department began deploying to disperse protesters about one minute before the USPP issued the third and final announcement instructing protesters to leave the area. The Inspector General’s report concluded: “Deploying before completion of the third warning was contrary to the operational plan, led to confusion within the crowd, and reduced the possibility that the USPP’s third and final warning would lead protesters to voluntarily clear the area.”<sup>21</sup> Major Adam DeMarco, the highest-ranking National Guard officer at the scene, later testified before the House Natural Resources Committee that the demonstrators “were engaged in peaceful expression of their First Amendment rights. Yet they were subjected to an unprovoked escalation and excessive use of force.”<sup>22</sup>

Controversies over the federal handling of protests in Washington, D.C., on June 1 were not limited to the dispersal of the crowd in and around Lafayette Park. After the protesters dispersed, the D.C. National Guard (DCNG) deployed five helicopters “to supplement the ground forces already actively supporting the federal and local response to the unrest in D.C.”<sup>23</sup> Two of the helicopters hovered over a crowd of protesters, with viral video capturing one of them – a UH-72A Lakota helicopter – hovering approximately 45-55 feet above the demonstrators.<sup>24</sup> Its rotor wash was so powerful that it snapped tree limbs and sent dust and debris, including broken glass, flying through the air. Only after leaving the scene did the pilots learn that the Metropolitan Police had requested that they “raise their ceiling so as not to interfere with police operations.”<sup>25</sup> An investigation by the Defense Department found that the pilots’ maneuvers “were consistent with the mission to show a military presence, which in and of itself, would serve to discourage an unlawful assembly of violent crowds and other unlawful activity.”<sup>26</sup> As I will demonstrate later in this report, this assumption about the psychological effects of a show of force on crowds is not well supported by the scientific literature. The investigation further revealed that military officials had “failed to adequately plan for and integrate the DCNG helicopters into the civil disturbance missions.”<sup>27</sup> An ACLU attorney called the pilots’ tactics “a dangerous, unprecedented show of force against American civilians exercising their First Amendment rights.”<sup>28</sup>

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19. *Ibid.*, p. 28.

20. *Ibid.*, p. 15.

21. *Ibid.*, p. 29.

22. “[Written Statement of Adam DeMarco](#),” hearing before the Committee on Natural Resources, U.S. House of Representatives, July 28, 2020.

23. Inspector General, U.S. Department of Defense, [D.C. National Guard’s Use of Helicopters on June 1, 2020](#) (May 26, 2021), 2.

24. Alex Horton, “[D.C. Guard misused helicopters in low-flying confrontation with George Floyd protesters. Army concludes](#),” Washington Post, April 15, 2021.

25. *National Guard’s Use of Helicopters*, p. 7. See note 23.

26. *Ibid.*, p. 9.

27. *Ibid.*, p. 8.

28. “[ACLU-DC files complaint on behalf of demonstrator injured by military helicopters used to intimidate racial justice demonstrators](#),” ACLU, Oct. 14, 2020.

The protests, riots, and insurrection activity that occurred in Washington, D.C., on January 6, 2021, raised further questions about the capacity of federal law enforcement authorities to handle crowd events effectively, particularly those involving high levels of violence. During these events, rioters overwhelmed police cordons and breached the U.S. Capitol. More than 2,000 rioters stormed the Capitol, disrupting a Joint Session of Congress, forcing legislators to evacuate, and delaying the certification of the 2020 presidential election. During the siege, 140 police officers were physically injured and at least four people died.<sup>29</sup> By December 31, 2022, 725 people had been arrested for their role in the violence.<sup>30</sup> While most critiques of law enforcement responses to civil disturbances allege that police *over-respond* by using excessive force and making poor-quality arrests, the Capitol insurrection represented a dramatic *under-response* by federal authorities from multiple agencies.<sup>31</sup> An investigation by the U.S. Senate attributed the breach to a variety of intelligence and operational failures involving the FBI, DHS, the U.S. Capitol Police, the Capitol Police Board, and the Department of Defense. The investigation further revealed that the U.S. Capitol Police lacked sufficient training or equipment for handling civil disturbances.<sup>32</sup>

Washington, D.C., is not the only city where federal law enforcement agencies have responded to recent protests. In the summer of 2020, federal agencies also responded to protests in Portland, Oregon, and several other U.S. cities. On June 26, 2020, President Trump issued an executive order excoriating state and local public officials for allegedly abandoning their law enforcement responsibilities in responding to recent racial justice protests. The executive order authorized federal law enforcement agencies “to assist with the protection of federal monuments, memorials, statues, or property.”<sup>33</sup> On that same day, the Federal Protective Service established an operational plan entitled Operation Diligent Valor to help protect federal property in the Pacific Northwest, including Portland. As part of this plan, federal law enforcement officers from four different DHS agencies (the Federal Protective Service, Customs and Border Protection, Immigration and Customs Enforcement, and the U.S. Secret Service) were deployed to Portland starting on July 4, 2020. By August 31, 2020, 755 DHS officers had been deployed to Portland, in addition to officers from other federal agencies.<sup>34</sup>

News reports and viral videos about the unprofessional behavior of federal officers in Portland began to surface soon after. For instance, multiple reports emerged about federal officers operating incognito, not wearing name tags or identification numbers, and in some cases not even wearing agency identifiers.<sup>35</sup> Refusing to wear individual identifiers is a well-known method used by

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29. This includes only the four people who died *during* the event: Ashli Babbitt (shot by police), Rosanne Boyland (drug overdose), Kevin Greeson (natural causes), and Benjamin Phillips (natural causes). This list does not include others who were present during the event but who died later due to causes associated with the event.

30. Keith L. Alexander, “[Prosecutors break down charges, convictions for 725 arrested so far in Jan. 6 attack on U.S. Capitol](#),” *Washington Post*, Jan. 12, 2020.

31. Edward R. Maguire, “Policing the 2021 U.S. Capitol insurrection,” *Routledge Handbook of Policing Within a Crisis*, eds. G. Cordner, G. & M. Wright (Routledge, in press).

32. Committee on Homeland Security and Government Affairs, Committee on Rules and Administration, “[Examining the U.S. Capitol Attack: a Review of the Security, Planning, and Response Failures on January 6](#)” (U.S. Senate, n.d.).

33. Executive Order 13933, “[Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence](#),” June 26, 2020.

34. Office of Inspector General, Department of Homeland Security, [report on federal law enforcement in Portland](#), April 16, 2021.

35. Josh Campbell, “[Defense bill would stop unidentified federal forces from patrolling American streets](#),” CNN, Dec. 4, 2020; Adam K. Raymond & Chas Danner, “[Unidentified federal agents are detaining protesters in Portland](#),” *New York Magazine*, July 17, 2020.

police officers to escape accountability for their actions. All law enforcement agencies should have policies designed to ensure that officers do not engage in this practice. There are credible reasons for police officers not to wear their names on their uniforms during crowd events, but in such instances, officers should be assigned unique numeric or alphanumeric codes to display visibly on their uniforms and helmets. Refusing to wear agency identifiers is much less common and serves as an unambiguous sign of a management failure in the agencies that allowed this to occur. Multiple reports also emerged about unidentified federal law enforcement officers driving around Portland in unmarked vehicles, seizing and detaining people, in some cases without making arrests or filing reports.<sup>36</sup> These detentions raised serious concerns about whether federal agents were violating people's civil rights.<sup>37</sup>

News reports and videos featuring federal officers using excessive force against protesters, journalists, legal observers, and medics also began to surface. For instance, on July 12, federal officers shot a 26-year old protester named Donavan LaBella in the head with a less-lethal impact munition, fracturing bones in his face and skull and causing a traumatic brain injury.<sup>38</sup> It is well known that kinetic impact munitions can cause death or serious injury when fired at the head, which is why police are trained to fire these rounds at less vulnerable areas of the body.<sup>39</sup> On July 18, a viral video showed U.S. Navy veteran Christopher David approaching federal officers to ask them "why they were not honoring their oath to support the Constitution." In response, officers began pepper-spraying him and beating him with a baton, fracturing his hand.<sup>40</sup> A study conducted by Physicians for Human Rights revealed a perception among protest medics and EMTs that there was an increase in injuries, including head injuries, once the federal law enforcement officers arrived in Portland.<sup>41</sup>

The State of Oregon and the City of Portland responded swiftly to the federal government's activities. On July 17, Oregon Attorney General Ellen Rosenblum filed a federal lawsuit against the federal law enforcement agencies and officers working in Portland. The lawsuit alleged that unknown federal law enforcement officers ("John Does 1-10") "have been using unmarked vehicles to drive around downtown Portland, detain protesters, and place them into the officers' unmarked vehicles, removing them from public without either arresting them or stating the basis for an arrest..." Moreover, because some federal officers were not wearing individual or agency identifiers, the lawsuit noted that when people walking through the streets of Portland are "confronted by anonymous men in military-type fatigues and ordered into an unmarked van," they can reasonably assume that they are being kidnapped and that they are the victim of a crime.<sup>42</sup> On July 22, the Portland City Council passed a unanimous resolution banning the Portland Police from assisting

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36. Jonathan Levinson & Conrad Wilson, "[Federal Law Enforcement Use Unmarked Vehicles to Grab Protesters Off Portland Streets](#)," Oregon Public Broadcasting, July 16, 2020.

37. ACLU of Oregon, "[ACLU of Oregon Denounces Unlawful Actions of Militarized Federal Agents in Portland](#)," ACLU of Oregon, July 16, 2020.

38. Levinson and Wilson, "[Grab Protesters Off Portland Streets](#)."

39. Rohini J. Haar et al., "Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review," *BMJ Open* 7, no. 12, (2017).

40. Christopher David, "[Why aren't feds protecting civil rights? We'll find out in court](#)," USA Today, Aug. 27, 2020.

41. Kathryn Hampton, Michele Heisler, et al., "[Now they seem to just want to hurt us](#)", Physicians for Human Rights, October 2020.

42. *Rosenblum v. John Does 1-10 et al.*, no 3:20-cv-01161-HZ (D. Or. 2020).

or receiving assistance from federal law enforcement officers engaged in crowd control operations in Portland. City Commissioner Chloe Eudaly said she brought the resolution forward because the city of Portland was “enduring a violent federal paramilitary operation.”<sup>43</sup>

People harmed by the federal government’s actions in Portland – including protesters, journalists, medics, and legal observers – also quickly filed civil suits alleging constitutional violations. On July 23, a federal judge issued a temporary restraining order enjoining the Department of Homeland Security and the U.S. Marshals Service from “arresting, threatening to arrest, or using physical force” against protesters and legal observers unless they had committed a crime. Furthermore, the judge exempted journalists and legal observers from the need to disperse when law enforcement officials issue an order to disperse. The judge also enjoined these federal agencies from seizing equipment used by journalists and legal observers, such as cameras and press passes.<sup>44</sup> On August 20, the same judge issued a preliminary injunction containing these same provisions, but adding a requirement that the defendants find a way to place “unique identifying markings (using numbers and/or letters) on the uniforms and/or helmets” of uniformed DHS law enforcement officers deployed to Portland.<sup>45</sup>

A group of journalists filed a federal class-action lawsuit against federal and local law enforcement agencies, including the U.S. Marshals Service, the Department of Homeland Security, and the City of Portland, due to alleged civil rights violations against journalists working at the protests. The district court issued a preliminary injunction against the city and the federal defendants, who then appealed the decision. A panel of judges from the U.S. Court of Appeals for the 9<sup>th</sup> Circuit denied the appeal. The appeals court noted in its order: “it appears undisputed that the intensity of the protests escalated” after the federal law enforcement agents arrived in Portland.<sup>46</sup> The panel noted that “many victims had been standing on public streets, sidewalks, and parks, well away from protesters, and were not engaged in unlawful activity when they were shot, tear gassed, shoved, or pepper sprayed by the Federal Defendants.”<sup>47</sup> Finally, because the district court’s findings included “so many instances in which plaintiffs were standing nowhere near protesters while photographing and observing the Federal Defendants’ actions, they provide exceptionally strong evidentiary support for the district court’s finding that some of the Federal Defendants were motivated to target journalists in retaliation for plaintiffs’ exercise of their First Amendment rights.”<sup>48</sup>

Several external assessments also documented shortcomings in the federal law enforcement response to the protests in Portland. A report by the DHS Office of the Inspector General concluded that DHS had the authority to deploy federal law enforcement officers to Portland. However, the report noted that DHS agencies were not properly prepared to perform the functions assigned to them in Portland. More specifically, “not all officers completed required training; had the necessary equipment; and used consistent uniforms, devices, and operational tactics when

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43. Alex Zielinski, “[City Council Votes to End Portland Police Cooperation with Federal Officers](#)”, Portland Mercury, July 22, 2022.

44. [Index Newspapers LLC v. City of Portland](#), no. 3:20-cv-1035-SI (D. Or. 2020).

45. *Ibid.*

46. [Index Newspapers LLC v. United States Marshals et al.](#), no. 20-35739 (9th Cir. 2020).

47. *Ibid.*

48. *Ibid.*

responding to the events in Portland.”<sup>49</sup> The report also concluded that “without the necessary policies, processes, training, and equipment, DHS will continue to face challenges securing federal facilities, particularly high-risk facilities, during periods of civil disturbance. Further, limited planning and preparedness could result in injury, death, and risk of liability.”<sup>50</sup> A report on the law enforcement response to the Portland protests by Physicians for Human Rights encouraged the U.S. Congress to “hold formal hearings to investigate excessive use of force by federal law enforcement officials.” The report also recommended that Congress adopt legislation requiring federal law enforcement officers to “use de-escalation techniques prior to use of force, to wear body cameras and use dashboard cameras, and to clearly identify their agencies and names.”<sup>51</sup> A report from the U.S. General Accounting Office revealed that four of the federal law enforcement agencies that deployed uniformed personnel to the protests and riots in Portland had insufficient policies on the reporting and review of less-lethal force. The report also noted that the Federal Protective Service, which led the federal response to protests and riots in Portland, did not institute a policy on public-order policing until June 2021, thirteen months after the protests began.<sup>52</sup>

### 3. Indirect federal involvement

In addition to its *direct* involvement in responding to protests, the federal government plays a variety of *indirect* roles in shaping the law enforcement response to protests in the United States. Perhaps the most important of these indirect roles is training law enforcement agencies at all levels of government on how to handle crowd events such as protests, riots, and civil disturbances. Training on crowd management and crowd control is offered by numerous federal agencies. Some of these agencies are responsible for providing training to external agencies. For instance, the Federal Emergency Management Agency (FEMA) provides training to law enforcement agencies at all levels of government, including federal, state, and local. The Federal Law Enforcement Training Centers (FLETC) provide training primarily to personnel from federal law enforcement agencies. Other federal agencies provide training to their own personnel on crowd management, crowd control, responding to civil disturbances, using less-lethal weapons, and related topics.<sup>53</sup> Unfortunately, many federal law enforcement training materials are classified or are otherwise unavailable to the public. However, the materials that are available provide useful insights about how federal agencies train law enforcement officers to handle crowd events. Below I provide three examples from the Federal Emergency Management Agency, the Federal Protective Service, and the U.S. Army.

#### Federal Emergency Management Agency

FEMA’s Center for Domestic Preparedness provides training for state and local law enforcement agencies on mobile field force operations. Mobile field forces are rapid response teams that are

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49. Report on federal law enforcement in Portland. See note 34.

50. *Ibid.*, p. 15.

51. Physicians for Human Rights, “[Now They Seem to just Want to Hurt Us.](#)”

52. United States Government Accountability Office, “[Law Enforcement: Federal Agencies Should Improve Reporting and Review of Less Lethal Force.](#)”, December 2021.

53. *Ibid.*

trained to respond to civil disturbances. FEMA's *Field Force Operations Student Guide* is intended to "provide students the knowledge and skills required to manage and control crowds and demonstrations." Module 6 of the *Student Guide* provides "a description of crowd dynamics based on leading theories of crowd psychology and recent analysis of protest groups."<sup>54</sup> Unfortunately, this material is based on outdated and inaccurate theories of crowd psychology and behavior. For example, the document states that crowds share a "homogeneity of mental state."<sup>55</sup> However, decades of research evidence have shown that crowds are typically heterogeneous. Moreover, it is well known in crowd psychology that when police use tactics that treat crowds as if they are homogeneous, they often end up setting in motion a self-fulfilling prophecy in which moderate protesters begin to align with those who embrace more radical protest tactics. Thus, police actions can inadvertently increase tensions and instigate conflict and violence by leading crowds to unify in opposition to the police.<sup>56</sup> Similarly, the document states that "mob actions and ideas are like a contagious disease" that can spread rapidly throughout the crowd.<sup>57</sup> This social contagion perspective on crowds was popularized by French scholar Gustave Le Bon in his 1896 book entitled *The Crowd: A Study of the Popular Mind*.<sup>58</sup> Although the idea of social contagion effects in crowds remains popular among police, it has been thoroughly and convincingly debunked over more than five decades of crowd psychology research. Moreover, it serves as the conceptual foundation for the use of policing tactics that often backfire by escalating conflict and violence.<sup>59</sup> The document fails to address mounting research evidence from the study of crowd psychology and behavior on the dynamic and reciprocal nature of conflict between crowds and police. This research evidence suggests that both groups often engage, whether purposefully or inadvertently, in behaviors that tend to escalate conflict. The absence of this material is not a minor academic quibble. The crowd control tactics taught in this course are based on a profound misunderstanding of crowd psychology and behavior and in many circumstances will increase the likelihood of conflict and violence rather than reducing it.

**Although the idea of social contagion effects in crowds remains popular among police, it has been thoroughly and convincingly debunked over more than five decades of crowd psychology research. Moreover, it serves as the conceptual foundation for the use of policing tactics that often backfire by escalating conflict and violence.**

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54. Center for Domestic Preparedness, Federal Emergency Management Agency, *Field force operations: Student guide*, 2017.

55. *Ibid.*, p. 109.

56. Edward R. Maguire & Megan Oakley, *Policing Protests – Lessons from the Occupy Movement, Ferguson, and Beyond: A Guide for Police* (Harry Frank Guggenheim Foundation, January 2020).

57. *Field Force Operations*, p. 109. See note 54.

58. Gustave Le Bon, *The Crowd: A Study of the Popular Mind* (T. Fisher Ulwin, 1896).

59. Edward R. Maguire et al., "Improve the policing of crowds," in *Transforming the Police: Thirteen Key Reforms* Charles M. Katz & Maguire, eds. (Waveland Press, 2020), 235-248; Fergus G. Neville and Stephen D. Reicher, "Crowds, social identities, and the shaping of everyday social relations," in Christopher J. Hewer and Evanthis Lyons, *Political Psychology: A Social Psychological Approach* (Wiley, 2018), 231-252; Stephen Reicher et al., "An integrated approach to crowd psychology and public order policing," *Policing: An International Journal* 27, no. 4 (2004), 558-572; Clifford Stott and John Drury, "Contemporary understanding of riots: Classical crowd psychology, ideology and the social identity approach," *Public Understanding of Science*, 26, no. 1 (2017) 2-14.

## Federal Protective Service

The Federal Protective Service (FPS) guards facilities owned by the Government Services Administration (GSA), “providing law enforcement and security for more than a million federal workers and visitors at over 8,300 buildings nationwide.”<sup>60</sup> Chapter 13 of its *Security Guard Information Manual* covers types of civil disturbances, the impact of civil disturbances, demonstrations, and FPS response procedures for these events. It is unclear where the document’s coverage of different types of crowds comes from, but it has no basis in science. Like the FEMA *Student Guide*, it contains echoes of social contagion theories, noting that a crowd can transform into a mob when its members become excited, “lose respect for law and order, and follow its leaders into mass lawlessness.”<sup>61</sup> This transition from a crowd into a mob occurs when the crowd “has been inflamed by agitators appealing to emotion rather than reason.”<sup>62</sup> Based on the idea that “agitators” can transform a peaceful crowd into an unruly mob, the FPS recommends “removing or isolating individuals involved in the incident before the crowd can unite” and “removing or isolating” the crowd’s leaders.<sup>63</sup> Many of these same points appear in the FPS’ *National Protective Security Officer Training Program Student Guide*.<sup>64</sup> The document further instructs officers to avoid contact with demonstrators. This is the opposite of the dialogue-based approaches that have been found most effective in reducing conflict and violence during crowd events.<sup>65</sup> Unfortunately, virtually all the material on crowd psychology and behavior in both documents is inconsistent with the available research evidence on these phenomena. This inaccurate understanding of crowd dynamics can lead to the use of security and law enforcement procedures that are more likely to escalate conflict and violence than to reduce it.

## U.S. Army

Although the Army is not a law enforcement agency, the Army National Guard provides support to domestic law enforcement agencies during civil disturbance operations. The U.S. Army field manual on “Civil Disturbances” is intended to provide guidance for “Army commanders and staff elements at all echelons who are tasked with planning and directing civil disturbance missions” inside and outside of the continental United States.<sup>66</sup> The field manual is internally contradictory in the sense that it contains certain material that is consistent with research evidence on crowd psychology and behavior and other material that is entirely inconsistent with this same evidence. For instance, it states (accurately) that “inciting a crowd to violence or a greater intensity of violence by using severe enforcement tactics must be avoided.”<sup>67</sup> Similarly, it acknowledges that if

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60. Federal Protective Service, *Security Guard Information Manual: Secure Facilities, Safe Occupants* (2008), 1.

61. *Ibid.*, 61.

62. *Ibid.*, 62.

63. *Ibid.*, 62.

64. Federal Protective Service, *National Protective Security Officer Training Program: Student Guide* (2018).

65. Hugo Gorringer et al., “Dialogue Police, Decision Making, and The Management of Public Order During Protest Crowd Events,” *Journal of Investigative Psychology and Offender Profiling* 9, no. 2 (2012), p. 111-125; Clifford Stott et al., “Advances in Liaison Based Public Order Policing in England: Human Rights and Negotiating the Management of Protest?” *Policing: A Journal of Policy and Practice* 7, no. 2 (2013), p. 212-226.

66. Department of the Army, [Civil Disturbances](#), (April 2014), v.

67. *Ibid.*, 1.

the response is perceived as excessive or overly forceful, an “escalation of hostilities or violence” may result.<sup>68</sup> The manual wisely advises troops engaged in civil disturbance operations to position forces out of sight of the crowd and “to persuade the crowd to quietly disperse by talking with the leaders.” All of these are important points that are consistent with contemporary research evidence and that should inform how law enforcement and military personnel respond to crowd events. The manual also notes that “crowds are made of many entities, and all participants are not the same.”<sup>69</sup> This, too, is an important insight that is consistent with the research evidence. Conceptualizing crowds as homogeneous (e.g., referring to them as a “mob”) conceals the diversity of people who comprise crowds and fuels the use of generic crowd control tactics that are ineffective at best and counterproductive or abusive at worst.<sup>70</sup>

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At the same time, the manual presents numerous outdated and inaccurate claims about crowd dynamics. For instance, it notes that emotional contagion “is the most dramatic psychological factor of crowd dynamics. It provides the crowd with a temporary bond of psychological unity. Lasting long enough, this unity can push a simple organized crowd into a mob. Normal law and authority are rejected en masse under these conditions, increasing the capacity for violence and panic to erupt.”<sup>71</sup> As with the FPS manuals, the discussion of types of crowds (e.g., “agitated” and “mob-like”) as well as crowd tactics appears to be fabricated and is inconsistent with modern research evidence from the study of crowd psychology and behavior. The manual also recommends the use of military working dogs “as a method of deterring the crowd from approaching or engaging the formation.”<sup>72</sup> It further notes that the presence of military working dogs is useful as “an intimidation measure” and that the presence of a dog “may produce a profound psychological effect on the crowd.”<sup>73</sup> Finally, the manual recommends that when establishing a crowd-control formation, “for maximum effect on the crowd, have [the troops] form their formation decisively and professionally” and “exploit the psychological effects of a show of force.”<sup>74</sup> In asserting the anticipated psychological effects of using dogs and crowd-control formations, the manual expresses a fundamental misunderstanding of crowd psychology and how crowds are likely to react to shows of force by law enforcement authorities.

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68. Ibid., 2-8.

69. Ibid., 1-3.

70. Maguire & Oakley, *Policing Protests*. See note 56.

71. Department of the Army, *Civil Disturbances*, 2014, p. 1-4. See note 66.

72. Ibid., 2-7.

73. Ibid., 2-7.

74. Ibid., p. 2-8.

## 4. Improving the federal government’s role in handling protests

In the United States, protests are historically meaningful. From the Boston Tea Party to the women’s suffrage movement to the Civil Rights Movement, protests have played an important role in promoting major social changes. The First Amendment serves as the bedrock of the right to protest, protecting people’s rights to freedom of speech and peaceful assembly. Law enforcement officers at every level of government take oaths to support and defend the Constitution. However, as we learned during the Occupy movement in 2011 and 2012, the nationwide protests following the death of Michael Brown in Ferguson in 2014, and the nationwide protests following the death of George Floyd in 2020, they often violate this oath when responding to protests by using excessive force, arresting people who have not committed a crime, or engaging in other unprofessional and unethical practices. Widespread constitutional violations occurred when police *over-responded* to protests during these three social movements, thereby undermining public perceptions of police and feeding into the ongoing legitimacy crisis that police continue to face today.

At the same time, there are moments – such as the 2017 Unite the Right rally in Charlottesville and the January 6, 2021 Capitol riots – where police *under-respond* to protests and riots.<sup>75</sup> The tendency among the law enforcement groups involved in these events to respond differently based on the political sympathies of a crowd raises disturbing questions about the possibility of ideological or partisan bias in law enforcement and further contributes to the police legitimacy crisis in the United States.<sup>76</sup> Law enforcement leaders need to monitor their responses to protests carefully to ensure that their decisions are content-neutral and are not influenced by the political affiliations of protesters.

**Law enforcement leaders need to monitor their responses to protests carefully to ensure that their decisions are content-neutral and are not influenced by the political affiliations of protesters.**

How law enforcement officers conceptualize crowds and crowd dynamics is vital because these understandings shape their responses to crowd events. The materials I reviewed earlier make it clear that at least some federal law enforcement and military training and doctrine on crowd control, crowd management, and civil disturbances is premised on inaccurate assumptions about crowd dynamics. These assumptions ignore a large body of research evidence on crowd psychology and behavior and are inconsistent with important findings from that research. For instance, although research in many contexts has found that crowds tend to be heterogeneous, consisting of people with a variety of social identities, federal training is replete with references to “the crowd” and “the mob” as if it is a single homogeneous entity. This inaccurate perspective is dangerous

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75. Edward R. Maguire, “Policing Rival Protests,” *Rethinking and Reforming American Policing: Leadership Challenges and Future Opportunities*, Joseph A. Schafer & Richard W. Myers, eds. (2022), 289-310.

76. For research evidence on partisan disparities in law enforcement responses to protests, see Roudabeh Kishi et al., “A Year of Racial Justice Protests: Key Trends in Demonstrations Involving the BLM Movement,” Armed Conflict Location & Event Data Project, May 2021; Heidi Reynolds-Stenson, “Protesting the police: Anti-police brutality claims as a predictor of police repression of protest”, *Social Movement Studies* 17, no. 1 (2018), 48-63.

because it fuels the use of undifferentiated crowd control tactics that often result in arresting or using force against people in crowds who have not committed any crime.<sup>77</sup>

Although people participating in a protest share certain perspectives, they tend to have widely varying social identities. Research shows that protesters have very different perspectives on the use of more extreme protest tactics such as property damage and interpersonal violence. Fortunately, the proportion of people embracing the use of violence as a legitimate protest tactic tends to be small. For instance, research conducted during the Occupy movement found that about 10.9 percent of protesters in Washington, D.C., and 12.1 percent of protesters in New York City viewed it as somewhat or very reasonable to use severe forms of violence against police, such as throwing harmful objects or using a weapon.<sup>78</sup> The most important factor influencing protesters' support for the use of violence against police officers was how the police had treated them and their peers during the movement. When people perceived the police as behaving in a procedurally unjust or overly forceful manner toward protesters, they were more likely to support the use of violence against the police.

Similarly, although theories about social contagion effects in crowds have been debunked for decades, they continue to play a prominent role in federal training materials. Once again, this is not a minor point. When law enforcement officers embrace social contagion perspectives, they tend to focus on preemptively arresting “agitators” to shut down the contagion process. But preemptive arrests are likely to promote greater conflict and violence if they are perceived by the crowd to be arbitrary or unjust. If an individual’s conduct clearly warrants an arrest (due to his or her participation in violent or destructive behavior), then law enforcement can rely on dialogue and de-escalation measures with crowd leaders to help calm the crowd during and after the arrest.<sup>79</sup> The goal is to avoid triggering a widespread sense of moral indignation about the behavior of the police because, under such circumstances, the crowd may then unite around a shared sense of opposition to the police.

Finally, the training materials I reviewed featured a profound misunderstanding of how crowds respond to law enforcement crowd control tactics. The assumption is that when law enforcement officers don riot gear, carry less-lethal weapons, and form skirmish lines or other formations, these tactics will produce a psychological effect on crowd members that leads them to disperse. The research evidence suggests that the opposite is often true. As noted by Chris Burbank, for-

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77. Edward Maguire et al., “Attitudes Among Occupy D.C., Participants About the Use of Violence Against Police,” *Policing and Society*, 28, no. 5 (2018), 526-540; Edward Maguire et al., “Attitudes Towards the Use of Violence Against Police Among Occupy Wall Street Protesters,” *Policing: A Journal of Policy and Practice* 14, no. 4 (2020), 883-899.

78. John Drury & Steve Reicher, “Collective psychological empowerment as a model of social change: Researching crowds and power,” *Journal of Social Issues* 65, no. 4 (2009), 707-725; Maguire et al., “Policing of Crowds,” 2020 (see note 59); Maguire & Oakley, *Policing Protests* (see note 56); Reicher et al., “An integrated approach,” 2004 (see note 59).

79. Maguire & Oakley (*Policing Protests*, 76-81) provide a discussion of differentiated responses to crowd events. See note 56.

mer chief of the Salt Lake City Police Department, “if you line up a bunch of police officers with riot gear and shields, you are telling protesters to ‘go ahead and throw rocks and bottles at us.’”<sup>80</sup> The Army’s recommendation to use military working dogs as an intimidation measure during responses to civil disturbances is particularly alarming. The image of police dogs biting African-American protesters in Birmingham during the Civil Rights Movement is seared into the minds of many Americans and represents one of our nation’s lowest moments. The Army manual is correct that the presence of a dog “may produce a profound psychological effect on the crowd.” However, the manual’s assumption about the nature of that psychological effect is based on a fundamental misunderstanding of crowd dynamics. Research evidence from crowd psychology suggests that the use of dogs would likely promote anger, hostility, and an increased probability of conflict and violence.

**If law enforcement officers treat crowd members in a manner that members perceive as hostile, unfair, or otherwise inappropriate, the crowd may unite around a shared sense of opposition to law enforcement. This basic insight about crowd dynamics is routinely ignored in the training, planning, and operations associated with the law enforcement response to protests at the federal, state, and local levels.**

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.These misconceptions about crowd heterogeneity, alleged social contagion, and the effect of shows of force all share a common risk: If law enforcement officers treat crowd members in a manner that members perceive as hostile, unfair, or otherwise inappropriate, the crowd may unite around a shared sense of opposition to law enforcement.<sup>81</sup> This basic insight about crowd dynamics is routinely ignored in the training, planning, and operations associated with the law enforcement response to protests at the federal, state, and local levels.

The content of these flawed training materials is consistent with the actual *behavior* of federal law enforcement officers during protests and riots in Washington, D.C., and Portland. In Washington, D.C., when certain law enforcement teams deployed prematurely in the absence of audible orders instructing the crowd to disperse, the officers encountered significant resistance and hostility from crowds. In Portland, the presence of the federal law enforcement agencies re-ignited protests that had been decreasing in size and intensity prior to their arrival. In both settings, federal law enforcement agencies relied on tactics that, from a crowd psychology perspective, were almost perfectly designed to increase tensions and promote greater conflict and violence. This is especially true when considering that the protests were focused, in part, on police violence. What was notably absent in both settings were the types of strategies that research has shown to be most effective, such as communication, dialogue, and de-escalation. The absence of these evidence-based approaches was compounded by numerous instances of federal officers abusing their authority and using levels of force that were dramatically out of proportion with the threat. All of this was further compounded by some officers seeking to avoid accountability for their actions by not wearing clear indicators of their individual identity and agency affiliation.

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80. Maguire & Oakley, *Policing Protests*. See note 56.

81. Drury and Reicher, “Collective empowerment,” 2009 (see note 78), Maguire et al., “Improve the policing of crowds,” 2020, (see note 59); Maguire & Oakley, *Policing Protests*, (see note 56); Reicher et al., “An integrated approach,” 2004 (see note 59).

A complete accounting of evidence-based methods for handling protests and other crowd events exceeds the scope of this report, but I will provide a few general lessons. First, police should rely heavily on intelligence to learn ahead of time about protests and riots that may be planned in their jurisdiction. They should then seek to communicate with protest organizers before the event to engage in dialogue and to gather details about who is planning to show up, what they are planning to do, and what they hope to achieve. On the day of the event, police should continue to engage in dialogue with protesters, behave in a content-neutral manner, and take steps to deescalate conflict whenever possible. When intelligence suggests that an event may become destructive or violent, police should always have additional assets available “behind the curtain” in case officers on the front lines encounter violent resistance. If some people are engaging in destructive or violent behavior, police should seek to arrest those individuals and not take enforcement action against the whole crowd if possible. If it becomes necessary to disperse the whole crowd, police should issue clearly audible warnings before taking enforcement action. They should also position officers (in plain clothes if necessary) at the back of the crowd to ensure that the warnings can be heard. If they are planning to make mass arrests or use less-lethal weapons, they should adopt the British concept of “no surprises” by informing people what is going to happen if they do not disperse. Once dispersal orders are issued, they need to give people sufficient time to follow their orders.

In both its training and its operations, the federal government has fallen short of its responsibility to serve as a model for the nation in the use of judicious, professional, evidence-based crowd management practices that honor the First Amendment. To remedy this problem, the federal government should conduct a comprehensive review of the relevant training and policies of every federal agency that engages in crowd control, crowd management, or responding to civil disturbances. That review should focus on the extent to which the training and policies are consistent with current research evidence and innovative police practices derived from that evidence. Certain law enforcement agencies (mostly outside the United States) have spent years working with researchers to test and evaluate their crowd management practices. The federal government can learn from the experiences of these agencies and make whatever adjustments are necessary in their own training and doctrine for handling crowd events. The federal government should also work with researchers to begin testing and evaluating changes to its training, policies, and operations. This will involve carrying out honest after-action reviews that seek to identify which approaches worked well and which ones require further adjustments. In following these steps, the federal government can take a leadership role in adopting, testing, refining, and modeling evidence-based practices for handling crowd events in the most judicious and effective manner.

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## 5. Conclusion

The principal direct role the federal government plays in the policing of protests involves federal law enforcement agencies responding to protests on federal property, in and around federal buildings, and when called in to provide mutual aid or other forms of assistance in communities. In that capacity, federal law enforcement agencies sometimes over-respond, abusing their authority and committing constitutional violations. They also sometimes under-respond, failing to protect the people and places they are sworn to protect. Their principal indirect role in policing protests involves training state and local police on crowd management, crowd control, civil disturbances, and other topics associated with law enforcement handling of crowd events. Although much of the training offered by these agencies is classified or otherwise unavailable to the public, the materials that are publicly available reveal several weaknesses. These materials are inconsistent with current research evidence and embrace outdated and inaccurate perspectives on crowds. The federal government should serve as a model for the nation and the world in how to handle crowd events in a judicious, effective, and evidence-based manner. Federal law enforcement agencies currently fall far short of achieving that ideal. I encourage federal law enforcement officials to read my free guidebook on the policing of protests<sup>82</sup>, familiarize themselves with current research evidence and best practices, and begin making whatever adjustments are necessary to improve their policies, training, preparation, and handling of crowd events.

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82. Maguire & Oakley, *Policing Protests*, 2020. See note 56.