

# Police-Media Interactions during Mass Demonstrations

Practical, Actionable Recommendations





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# Letter from the Director of the COPS Office

Colleagues:

Journalism, like police work, is a public service. Although reporters and photographers are not employed or sworn by governments, their job is to keep the public accurately informed—and the people’s awareness of events in their community is as necessary to their safety as their protection by law enforcement when those events become dangerous.

In the chaos of an ongoing event, such as at mass demonstrations and other types of civil unrest, officers may not be able to identify journalists as easily as journalists are able to identify officers. In the summer of 2020 this confusion was especially problematic as the protests following the murder of George Floyd reached a scale and a pitch that communities had not experienced in a generation; media were sometimes swept up along with civilians, which posed serious challenges to upholding the First Amendment guarantee of freedom of the press.

At the request of then–Associate Attorney General Vanita Gupta and with the support of the COPS Office, the Police Executive Research Forum and the Reporters Committee for Freedom of the Press convened a roundtable—the first of its kind—to discuss how law enforcement and the media can better recognize and understand one another, improve their interactions, and ultimately focus on their public service duties. We hope both law enforcement agencies and newsgathering organizations of all sizes will take these recommendations to heart so that when a public demonstration next arises, the media can report effectively on events while the police keep everyone safe.

Sincerely,



Hugh T. Clements, Jr.

Director

Office of Community Oriented Policing Services





# Letter from the Executive Director of PERF

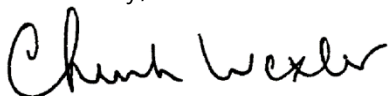
Colleagues:

The summer of 2020 will be remembered by many police officials as one of the most difficult periods of their careers, as officers responded to demonstrations in cities and towns across the United States. Most protests remained peaceful, but some turned violent and riotous. Journalists were on hand at many demonstrations to document what occurred and report what they saw to the public. While police and media mostly interacted without issue, there were some exceptions. During some chaotic situations, police struggled to distinguish between the crowd they were lawfully dispersing and reporters who were present to cover the protest. And in some notable instances, police improperly interfered with journalists' ability to report on the demonstrations.

To improve the police response to future demonstrations, the Office of Community Oriented Policing Services (COPS Office) asked the Police Executive Research Forum (PERF) to develop recommendations for police-media interactions during mass demonstrations. Working with the Reporters Committee for Freedom of the Press, PERF convened a meeting of police leaders and journalists to discuss workable guidelines for mass demonstrations. The resulting recommendations, contained in this report, will help police safely manage demonstrations while respecting the First Amendment rights of demonstrators and media.

I am grateful to the COPS Office for asking PERF to conduct this important work and to the Reporters Committee for their extensive help identifying the challenges that journalists face during these situations. Both police and media play a vital role in our democracy, particularly during demonstrations. I hope these recommendations help protect journalists' rights to report on protests and ensure police are able to protect public safety.

Sincerely,



Chuck Wexler  
Executive Director  
Police Executive Research Forum





# Introduction

The U.S. Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS Office), asked the Police Executive Research Forum (PERF), in collaboration with the Reporters Committee for Freedom of the Press, to convene a meeting of police and media representatives to develop actionable recommendations for police agencies and reporters on police-media interactions during mass demonstrations. In 2020, the murder of George Floyd inspired a wave of protests that were extraordinary in scale, number, and duration. Law enforcement agencies were overwhelmed and unprepared for these unprecedented events, and officers in many departments were not properly trained or given clear policy guidance on responding to these situations. The majority of demonstrations and protesters were peaceful, but in many cities a small number of individuals committed acts of violence, including against police—a combination of violent agitators and peaceful demonstrators that became the most challenging situation for police to manage.<sup>1</sup>

In many cases during these chaotic and rapidly escalating situations, officers struggled to differentiate individuals engaging in violence from peaceful protesters. Some agencies used dispersal orders, less-lethal munitions, and mass detainment to disrupt entire protests, and some agencies seized recording devices at protests without warrants rather than narrowly focusing on the violent individuals. Members of the media were frequently caught up in these tactics, and some were detained and mistreated.<sup>2</sup>

These experiences highlighted the need for “rules of the road” for both police and members of the media so journalists can inform the public while police can perform their duties essential to protecting public safety. This report provides considerations specific to members of the media that a law enforcement agency should weigh when planning for demonstration responses. Similarly, news outlets should be aware of law enforcement tactics and concerns during these events so they can inform their journalists of ways to cover the event while allowing the police to carry out their public safety duties unencumbered.

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1. PERF (Police Executive Research Forum), *Rethinking the Police Response to Mass Demonstrations: 9 Recommendations*, Critical Issues in Policing (Washington, DC: Police Executive Research Forum, 2022), <https://www.policeforum.org/assets/ResponseMassDemonstrations.pdf>.
  2. Grayson Clary, “Arrests of Journalists Continued Their Decline in 2022, But 2020 Still Casts a Shadow,” Reporters Committee for Freedom of the Press, last modified May 17, 2023, <https://www.rcfp.org/2022-press-freedom-tracker-part-3/>.



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“Police and media have a lot in common. We both run toward danger. We have to be there and see it to either adjudicate it or report about it correctly. . . . There is mutual benefit to clear, free, independent analysis of the most important events of our times, which is what the police are grappling with on the street and reporters are trying hard to honorably, fairly, and thoroughly tell the public about. Because the cornerstone of our democracy is an informed electorate.”

– *Al Baker, Director of Communications for the New York State Unified Court System, who previously served as Executive Director of Media Relations at the NYPD and as the Police Bureau Chief at the New York Times*

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On October 3, 2023, PERF and the Reporters Committee convened approximately 50 representatives of the police and the media to share their experiences and input at a roundtable in Washington, D.C. Then-U.S. Associate Attorney General Vanita Gupta and COPS Office Director Hugh T. Clements, Jr., attended and shared their insights, as did other DOJ staff. Before the roundtable, PERF gathered input by conducting virtual group interviews—two for media, two for police participants, and one for civil rights organizations—and disseminating a brief questionnaire. This report presents the resulting recommendations. To provide context, two sections preceding the recommendations briefly describe the constitutional issues involved and the sometimes difficult question of defining “the media.”

The recommendations in this report primarily address interactions between police and journalists affiliated with major news outlets, who were those largely represented at the roundtable. Many of these guidelines would, however, apply equally to freelancers and to members of the public engaged in observing or recording police activity during protests. Notably, some police representatives expressed that they face more challenges when dealing with reporters from smaller or less established media organizations that may have less experience with mass demonstrations or less capacity to provide their reporters with training and legal guidance. Also, some media participants noted that reporters face more challenges when dealing with smaller police agencies and those not used to handling these demonstrations.

Cognizant of these important variations in police and media organization resources and experiences, the report’s recommendations provide guidance about how police and members of the media can better understand one another’s roles, improve their interactions, and enable both groups to successfully fulfill their duties. It includes actionable steps both police agencies and members of the media should take before, during, and after mass demonstrations.



# Protecting Constitutional Rights

Demonstration management is challenging, particularly during rapidly evolving situations involving both peaceful protesters and individuals engaged in violent activity. But no matter how challenging a situation, police have a constitutional responsibility to respect and protect individuals' First and Fourth Amendment rights, among others.<sup>3</sup> Detaining, arresting, or seizing equipment being used by reporters engaged in newsgathering activities without probable cause not only is unconstitutional but also can deter others from exercising these fundamental rights.

## First Amendment

The First Amendment to the U.S. Constitution prohibits “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . . .” In practice this means that “journalists covering protests have the same rights as other members of the public to observe, photograph, and record in public places. . . . Police may not prevent journalists from covering protests if the journalists are in a place where the public is allowed, and they are not disrupting or interfering with law enforcement.”<sup>4</sup>

Importantly, given “the dramatic increase in citizen journalism, [several federal appellate courts] have also recognized that the right to gather news and access information . . . applies to private citizens as well as journalists.”<sup>5</sup>

## Fourth Amendment

The Fourth Amendment to the U.S. Constitution states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches or seizures, shall not be violated” without a warrant based on probable cause. It also prohibits the use of unreasonable or excessive force by police during stops, arrests, or other seizures. In the context of mass demonstrations, police may not use force indiscriminately or disproportionately, nor may they search or seize recording devices or equipment from a member of the public or of the media without voluntary consent or a warrant. The prohibition on warrantless searches extends to the search of a reporter’s phone or recording device even during an arrest, as the Supreme Court held in *Riley v. California*, 573 U.S. 373, 388 (2014). In addition, the Privacy Protection Act (PPA) of 1980 restricts the search and seizure of materials that are intended for publication and dissemination to the public. As such, the PPA (or state reporter “shield” laws) may prohibit the search of cell phones or electronic devices even with a warrant.<sup>6</sup>

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3. This section provides a brief and general description of relevant constitutional rights to provide context for the report’s recommendations. It is not meant to be a complete discussion of relevant law, nor is it intended to provide legal guidance for any particular situation.
  4. *Police, Protesters, and the Press* (Washington, DC: Reporters Committee for Freedom of the Press, 2022), <https://www.rcfp.org/wp-content/uploads/2022/06/PPP22.pdf>.
  5. *Police, Protesters, and the Press* (see note 4).
  6. 42 U.S.C. § 2000aa, <https://www.govinfo.gov/content/pkg/USCODE-2022-title42/html/USCODE-2022-title42-chap21A.htm>.



## DOJ findings of police violations

The Special Litigation Section of the DOJ's Civil Rights Division conducts investigations of police and sheriffs' departments to determine whether the agency has engaged in a "pattern or practice" of violating rights.<sup>7</sup> Past cases have addressed issues such as excessive force; discriminatory policing practices; and unlawful stops, searches, and arrests. Recently, as we will see, these investigations have also included findings of police violations of the First and Fourth Amendment rights of members of the public and media during mass demonstrations.

The DOJ's March 2023 Investigation of Louisville Metropolitan Police Department and Louisville Metro Government found that, "by using force against peaceful protesters without individualized and adequate justifications, LMPD [Louisville Metropolitan Police Department] repeatedly retaliated against speech, in violation of the First Amendment."<sup>8</sup> This principle also applies to force used against the media: DOJ also found that "LMPD subjected both credentialed press and livestreamers to mass arrests and retaliatory force . . . thus violat[ing] the firmly established qualified right of access for the press to observe government activities."<sup>9</sup>

DOJ's June 2023 Investigation of the City of Minneapolis and Minneapolis Police Department (MPD) concluded that MPD officers violated the First and Fourth Amendments during mass demonstrations. These violations included (1) using unnecessary and excessive force, (2) retaliating against protesters, (3) retaliating against journalists and unlawfully restricting their actions during protests, and (4) unlawfully interfering with individuals' right to observe and record police activity. DOJ emphasized that "retaliation need not rise to the level of physical force to offend the First Amendment. Any action—including a threat of harm—that would discourage the average person from exercising her right to speak or protest can constitute a violation."<sup>10</sup>

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7. This work reflects the Section's mission "to protect the rights of people who interact with state or local police or sheriffs' departments." Civil Rights Division, "Conduct of Law Enforcement Agencies," U.S. Department of Justice, last modified November 1, 2023, <https://www.justice.gov/crt/conduct-law-enforcement-agencies>.
  8. Civil Rights Division and U.S. Attorney's Office (USAO) for the Western District of Kentucky (W.D. Ky) Civil Division, *Investigation of the Louisville Metro Police Department and Louisville Metro Government* (Washington, DC: U.S. Department of Justice, 2023), [https://www.justice.gov/d9/press-releases/attachments/2023/03/08/2023.3.8\\_lmpd\\_findings\\_report\\_0.pdf](https://www.justice.gov/d9/press-releases/attachments/2023/03/08/2023.3.8_lmpd_findings_report_0.pdf).
  9. Civil Rights Division and USAO W.D. Ky Civil Division, *Investigation of the Louisville Metro Police Department* (see note 8).
  10. Civil Rights Division and U.S. Attorney's Office (USAO) for the District of Minnesota (D. Minn.) Civil Division, *Investigation of the City of Minneapolis and the Minneapolis Police Department* (Washington, DC: U.S. Department of Justice, 2023), [https://www.justice.gov/d9/press-releases/attachments/2023/06/16/minneapolis\\_findings\\_report\\_2023.06.15\\_0.pdf](https://www.justice.gov/d9/press-releases/attachments/2023/06/16/minneapolis_findings_report_2023.06.15_0.pdf).



The DOJ’s MPD report also reaffirmed the First Amendment principle noted earlier, that restrictions on “when, where, and how reporters gather information [must] ‘leave open ample alternative channels’ for gathering the news.”<sup>11</sup> Blanket enforcement of dispersal orders, curfews, or other public order measures can violate this principle because they prevent reporters from reporting what happens after those orders or measures are implemented. Significantly, DOJ not only found that MPD officers had violated these constitutional rights but also held MPD responsible for failing to proactively protect these rights.

By implementing the recommendations in the present report, police agencies can help protect individuals’ constitutional rights and minimize the likelihood of federal investigation.

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11. Civil Rights Division and USAO D. Minn. Civil Division, *Investigation of the City of Minneapolis* (see note 10).







# Defining “the Media”

Generally, under the First Amendment, all members of the public—not just the media—have the right to access public spaces; record anything occurring there, including police activity; and share that information widely. Therefore, roundtable participants from both police and media organizations agreed, in many cases it does not matter who police consider to be “the media.” In the case of mass demonstrations, there may be situations—such as dispersal orders or curfews—where the police may reasonably limit public access. In these circumstances, to ensure that these limitations are narrowly tailored, the police may need to exempt reporters from these restrictions, and under those circumstances, they will need to determine who they consider to be members of the media. Because this can be challenging in chaotic moments, it is recommended that police err on the side of inclusiveness, defining as “media” both credentialed press from established media outlets and noncredentialed individuals who are acting as reporters in their function and behavior. In no circumstances can police distinguish among the media based on their expressed or anticipated viewpoints or, except in highly limited circumstances where the police would bear a heightened burden to show specific need, the content of their reporting. For the purposes of this report, engaging in a journalistic function consists of recording or reporting on a mass demonstration to document and share information with the public. For behavior to be considered journalistic, the individual must be engaging in newsgathering activities, not participating in the demonstration.<sup>12</sup>

The DOJ has also used function and behavior to determine who qualifies as media in its guidelines governing when and how it can use subpoenas or other investigative tools to demand records from or of reporters.<sup>13</sup>

Reporters employed by major media organizations almost always carry press credentials issued by those organizations. Most reporters at smaller organizations, as well as freelancers and some journalism students, also carry some sort of credential. For smaller outlets that do not currently credential their reporters, the Reporters Committee can offer assistance in securing credentials, provides a hotline for reporters if they face issues in the field (including during protest activity), and conducts free trainings for news organizations and police departments on First Amendment protections at protests.<sup>14</sup>

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12. Courts considering the question of who is clearly identifiable as members of the media during protests have pointed to behavioral indicators, which can include “people standing off to the side of protests not engaged in protest activity, people not intermixed with protest activities, and people carrying professional-grade photographic equipment” (*Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817 [9th Cir. 2020] at 823), though courts have also been careful to note that no one indicator is determinative.

13. “Justice Manual, § 9-13.400(A),” U.S. Department of Justice, last modified January 2020, <https://www.justice.gov/jm/jm-9-13000-obtaining-evidence#9-13.400>; 28 C.F.R. § 50.10, <https://www.govinfo.gov/content/pkg/CFR-2023-title28-vol2/xml/CFR-2023-title28-vol2-sec50-10.xml>.

14. The Reporters Committee’s legal hotline can be reached at <https://www.rcfp.org/legal-hotline/>, 800-336-4243, and [hotline@rcfp.org](mailto:hotline@rcfp.org).





Press credentials are intended to provide ease of access and identification. In situations where access or space is limited, credentials identify individuals as members of the media, who act as proxies for the public in newsgathering and sharing information. In addition, credentials can help police quickly identify reporters during a demonstration. However, as noted earlier, the lack of a credential does not mean an individual is not—or should not be considered—a member of the media, and constitutional protections for the press do not depend on the possession of a credential.

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“How do the police clearly determine who’s an observer and who’s a participant? Credentials are a helpful tool to faster identify media as observers. But they’re not the only answer. They’re just a tool that helps police triage in real time.”

– *David Vigilante, Executive Vice President and General Counsel, CNN*

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Some municipalities and law enforcement agencies issue their own press credentials to journalists for ease of identification, primarily for planned events or demonstrations. Others do not want to get involved in credentialing, which can be challenging to implement equitably as nonlocal or international members of the media may not be able to obtain these credentials in advance of spontaneous events. It is also necessary to ensure that credentialing processes do not interfere with the First Amendment rights of members of the public by preventing them from accessing and sharing information about certain events. And, again, the lack of a credential does not deprive someone engaged in journalistic activity of their rights.

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“The media can be where the public can be, and the public can be where the media is at. That’s what the law says. And that’s why we stopped doing department-issued media credentials.”

– *Chief Tom Manger, U.S. Capitol Police*

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# Recommendations

The following recommendations, based on input from police and media participants in the roundtable, are grouped according to their application before, during, or after a mass demonstration.

## Before an event

Police agency policy should emphasize the media's essential role in a free society as well as journalists' First Amendment rights.

By including this language in its policy, an agency demonstrates its commitment to these values and sets expectations for its officers.

These priorities should be prominently stated toward the beginning of any agency policies pertaining to mass demonstrations or media relations. They should be regularly reinforced in messaging from department leaders and supervisors.

This language should not only emphasize the media's role and rights but also set the expectation that officers will respect and proactively protect these rights.

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"The relationship between the police and the news organizations in a democratic society is based upon complementary rather than conflicting interests. News organizations have a legitimate need for information about public safety activities and provide a wide reaching opportunity to inform the public about matters involving crime, quality of life and public safety. . . . The Boston Police Department actively seeks to establish a cooperative climate in which information involving matters of public interest may be obtained in a manner that does not hamper police operations or abridge the rights of the accused."

– *Boston Police Department\**

\*"Rule 300 – Office of Media Relations – Release of Official Information," Boston Police Department, last modified May 6, 2015, <https://police.boston.gov/rules-procedures/>.

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"[As the Head of Media Affairs at a police department], I spent 355 days of the year trying to get the reporters to talk about the police. Every day I'm trying to find ways to tell the police story. During those other 10 days, when there's a protest, I'm not going to suddenly say, 'Don't tell this story.' I want them to tell that story too. And I want them to see our body-worn camera video and see our perspective and see what see what the police are facing. I think all of the storytelling possible is good for the police."

– Al Baker, Director of Communications for the New York State Unified Court System, who previously served as Executive Director of Media Relations at the NYPD and as the Police Bureau Chief at the New York Times

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**Police agency policy should clearly state that all members of the public, including members of the media, have the right to observe and record what they like in public spaces—including recording police officers and government activity.**

This policy should be reinforced during recruit and in-service training as well as any training provided prior to a mass demonstration. When conducting scenario-based training, agencies should include role players acting as members of the public who are recording the incident on their phones.

Some agencies frequently encounter individuals who refer to themselves as First Amendment auditors—regularly recording the police, sometimes in a confrontational manner. Those agencies train officers that people are allowed to record unless they are interfering with police work. Agencies should clearly define “interfering” to cover only physical obstruction of police activity.<sup>15</sup>

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15. Courts have held that individuals cross the boundary into interference only if their observing and recording rises to the level of “physical obstruction” (*City of Houston v. Hill*, 482 U.S. 451, [1987], 462, n. 11) or “is accompanied by a physical act which interferes with an officer’s official duties” (*Jordan v. Adams County Sheriff’s Office*, 73 F.4th 1162 [10th Cir. 2023], 1170). “[P]hysically blocking the officer from accessing a crime scene” while recording (*Jordan v. Adams County Sheriff’s Office*, 1170), for instance, may be addressed as interference, but merely being “close to the arrest scene” while recording may not (*Perkins v. Hart*, No. 22-30456, [5th Cir. Nov. 30, 2023], 14).



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“Members of the public, including media representatives, have an unambiguous First Amendment right to record officers in public places, as long as their actions do not interfere with the officer’s duties or the safety of officers or others.”

– *Pittsburgh Bureau of Police\**

\* “Order Number 69-5: Pictures, Videos, and Audio Recordings of Police Officers while Performing Official Functions in Public Spaces,” *Manual of Procedural Orders* (Pittsburgh, PA: Bureau of Police, 2015), <https://pittsburghpa.gov/files/police/orders/ch6/69-05-Pictures-Videos-&-Audio-Recordings-of-Police-Officers-While-in-Public-Spaces.pdf>.

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Police agency policy should clearly state that the Fourth Amendment protects against the search or seizure of recording devices or equipment without voluntary consent or a warrant, including when a journalist has been arrested.<sup>16</sup> It should also clearly state that destruction of these items by police or at the insistence of police is not allowed.

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“The Memphis Police Department recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record MPD members while members are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.”

– *Memphis Police Department\**

\* “Chapter II section 14: Public Recordings,” *Memphis Police Department Policy and Procedures* (Memphis, TN: Memphis Police Department, 2014), [https://memphispolice.org/wp-content/uploads/2023/02/CHAPTER2\\_UPDATED\\_2.pdf](https://memphispolice.org/wp-content/uploads/2023/02/CHAPTER2_UPDATED_2.pdf).

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Police officers should not search a journalist’s cell phone or recording device without voluntary consent or a warrant. This is true even when a journalist has been detained or arrested.<sup>17</sup> While a warrant is pending following detention or arrest, police may only secure devices to externally examine them for physical threats, not search their contents.

Agencies should reinforce this message during training and prior to demonstrations.

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16. Note that, under the federal Privacy Protection Act (PPA, 42 U.S.C. § 2000aa), there may be instances where items containing a journalist’s work product or documentary material may not be searched even with a warrant. For documentary material, the PPA generally requires authorities to seek such information using a subpoena. See note 6.

17. Courts have recognized that, in individual cases, the exigencies of the situation may make the needs of law enforcement so compelling that a warrantless search would be reasonable. With respect to the search of a journalist’s electronic devices following detention or arrest, however, these instances would be exceedingly rare, and, to the extent they occur, would likely involve the imminent threat of physical injury.



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“Under no circumstances shall any recording device being used to record police personnel be intentionally damaged or destroyed or may any media, such as memory cards or sticks, within such recording devices be damaged, destroyed, or deleted.

...

“Officers should be aware that the seizure or destruction of such recording devices or media without a search warrant or due process is a constitutional violation and officers may be sued and subjected to both compensatory and punitive damages.

...

“The mere fact that an individual has been detained or even arrested for [obstructing the administration of law or other governmental function] does not automatically establish probable cause to seize and search any recording devices the individual possesses. This property shall be secured with all other property during the investigation, but not viewed or searched by the officer.”


– *Pittsburgh Bureau of Police\**

\* “Order Number 69-5: Pictures, Videos, and Audio Recordings of Police Officers while Performing Official Functions in Public Spaces,” *Manual of Procedural Orders* (Pittsburgh, PA: Bureau of Police, 2015), <https://pittsburghpa.gov/files/police/orders/ch6/69-05-Pictures-Videos-&-Audio-Recordings-of-Police-Officers-While-in-Public-Spaces.pdf>.

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**Police agency policy should provide guidance on who is considered a member of the media and describe the circumstances in which this distinction matters.**

As explained earlier, it often does not matter whether a given individual is considered a reporter because the media and the public both have rights to access and record in public spaces. But police may need to make this determination in some situations, such as when exempting reporters from sweeping dispersal orders or curfews. Anyone claiming to be a journalist should be given a reasonable opportunity to present a credential or otherwise demonstrate their journalistic status.



Anyone who is identifiable as a reporter in function and behavior should be considered a member of the media. Indicators that someone is functioning and behaving as a reporter, not a demonstrator, include taking notes, conducting interviews, taking photographs, and passively recording audio or video. Conversely, someone may not be functioning and behaving as a reporter, whether or not they have a credential, if they are actively participating in the demonstration, such as chanting, holding protest signs, or being suspected of breaking the law.

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“‘Media’ means any person who is an employee, agent, or independent contractor of any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution.

“For purposes of this policy, the following are indicia of being a member of the media: visual identification as a member of the press, such as by displaying a professional or authorized press pass or wearing a professional or authorized press badge or some distinctive clothing that identifies the wearer as a member of the press.”

– *Seattle Police Department\**

\* “Interim Policy 14.090 – Crowd Management, Intervention, and Control,” *Seattle Police Department Policy Manual* (Seattle, WA: Seattle Police Department, 2023), <https://public.powerdms.com/Sea4550/documents/2555273>.

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**Police agency policy should include protocols that must be followed when determining whether to charge someone identifying themselves as a member of the media.**

Roundtable participants recognized that occasionally journalists are detained during chaotic events in which police are attempting to address violent behavior. Media participants said that while such occurrences are unfortunate, their organizations’ primary concern is having the ability to promptly locate their journalists and prevent wrongful charges.

If a journalist is inadvertently detained or arrested during the enforcement of a dispersal order, agencies should have a policy in place to prevent that detainment from leading to a charge.

Patrol officers should not be responsible for determining whether to charge or arrest individuals who identify themselves as a member of the media. An officer may detain an individual if probable cause exists to do so regarding unlawful behavior; however, someone with additional authority, such as the





operations commander, or at minimum a front-line supervisor, should make the final determination to avoid wrongful charging of journalists. If possible, the agency's public information officer should be consulted during these situations.

Once the journalist has established they were acting as a journalist and were inadvertently or improperly detained, officers should be directed to quickly release the individual without charge.

Roundtable participants suggested pairing the commanding officer with the department's communication lead at the scene to address any issues and find ways to de-escalate a situation. If someone is detained who has identified themselves as a member of the media and works for a media outlet, the communications lead can call the outlet's legal or editorial team to resolve the issue and prevent an unnecessary charge.

These procedures will help to avoid the unnecessary charging of journalists.

**Police agencies and news outlets should establish relationships long before any demonstration or other incident occurs.**

A police participant at the roundtable recommended that police departments provide new local reporters with a tour of headquarters, overview of the department's services, and a department contact, to establish the groundwork early on for a relationship.

Police agencies should also seek to establish points of contact with national and possibly international news outlets as applicable, because they may send reporters to cover major demonstrations.


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"If you don't have those relationships, you shouldn't make them just because you have an event. Four times a year in Chicago, we used to meet with the news directors, general managers, and assignment editors. It was the police commissioner and superintendent's opportunity to have a frank discussion about rules of engagement. What's working in terms of covering the police department? What can we do better? What can the media do better?"

– Anthony Guglielmi, Chief of Communications for the U.S. Secret Service, who previously served as Director of the Police Public Affairs Bureau at the Fairfax County (Virginia) Police Department, Chief Communications Officer at the Chicago Police Department, and Director of Public Affairs at the Baltimore City Police Department

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Police agencies should hold regular training on mass demonstration response, including interactions with members of the media. They may want to include the media in mass demonstration trainings or specific pre-event trainings to help officers and media understand one another’s perspectives during these situations.

This training should include guidance on journalists’ First Amendment rights, which is particularly important when the subject of a protest may be the police themselves. It should also address the unique goals and actions of photo and video journalists, who are often closest to the front lines of any demonstration to capture dynamic footage of key events.

**Media organizations should provide journalists with regular training on demonstrations.**

Media organizations may want to include police in these trainings to familiarize journalists with police operations. Police could explain their crowd control operations and the less-lethal tools they may use at demonstrations.

Police should recognize that while the majority of journalists affiliated with a news organization receive training, some do not—in particular, journalists from small agencies, freelancers, or reporters from foreign news outlets. Police should also be conscious of possible language barriers when interacting with journalists from non-English speaking or foreign outlets.

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“In general, the vast majority of larger news organizations have something traditionally called ‘hostile environments and first aid training,’ which is usually a multi-day training program, often conducted by a third party in close coordination with a news outlet. It covers a variety of topics, but it will usually include topics such as engaging with law enforcement and talking about de-escalation techniques. We talk about what your rights are, understanding there might be different rules in different states.”


– *Caroline Drees, Senior Director of Field Safety and Security, NPR*

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**Police should provide journalists and editors with pre-event briefings so they are aware of the police agency’s plan, expectations for journalists’ actions, and what may occur during a demonstration.**

This pre-event briefing should also explain to members of the media whether journalists are exempt from curfew or dispersal orders and provide guidance for what they should do if enforcement actions are taken.

Both police and media participants in the roundtable agreed that it is also helpful for journalists to know the tactics the police agency may use and the signs that police may be about to use these tactics, such as hand signals indicating police are planning to use tear gas. They also suggested that it may be helpful



for police agencies to share the different tactics that may be used in response to escalating behavior from the crowd. For example, if bad actors in the crowd throw objects, police may release tear gas or pepper balls, so journalists should leave the immediate area.

Before enforcing dispersal orders or deploying less-lethal force, police should give both demonstrators and members of the media clear, audible notice and a reasonable amount of time to comply.<sup>18</sup>

**Any police agencies providing mutual aid to manage a demonstration should be included in pre-event briefings.**

Mutual aid agencies should commit to following the lead agency's expectations and policies regarding the response to the demonstration and interactions with members of the media. Public information officers from all agencies should also be present at all pre-event briefings so they can effectively answer questions and put out information.

**Police agencies may want to coordinate with news outlets to designate safe locations for members of the media to cover an event. Reporters still have the right to report from elsewhere if they choose, but they should recognize that this choice might reduce police officers' ability to keep them safe.**

Many police agencies provide designated areas for the members of the media during demonstrations, sometimes referred to as "media pens." Police say these areas help them identify journalists who are present, ensure journalists' safety (particularly during demonstrations that may become violent), and avoid using limited resources to go into the crowd to protect journalists who are in danger. There is a concern among members of the media, however, that the use of "pens" could limit reporters' ability to properly cover the story.

Police agencies and news outlets should coordinate around potential safe areas to ensure that reporters can get the coverage they need while police carry out their public safety duties.

## During an event

Police should provide a point of contact for members of the media during an event. This should be someone who can be in consistent communication with the media and who can quickly contact the incident commander and other agency leaders should an incident occur. In most agencies, this will be the public information officer.

One of the biggest challenges for members of the media in resolving conflict in real time is finding a police representative with decision-making authority to de-escalate a situation. It is recommended that media outlets contact local police agencies before sending journalists into the field to establish a line of communication in case any incident occurs. Because that is not always possible, police departments should maintain a point of contact accessible to journalists or their lawyers for de-escalation purposes only (not for newsgathering or other uses).

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18. PERF, *Rethinking the Police Response to Mass Demonstrations* (see note 1).



**When possible, journalists on-scene should identify themselves to a police supervisor early during a demonstration.**

Journalists should attempt to locate the on-scene police supervisor when arriving at a demonstration and introduce themselves whenever possible. This precaution may help police quickly identify the individual as a journalist should the demonstration warrant a police response. This may not be always be possible; for example, the journalist may arrive after the demonstration has already escalated or the police supervisor may not be easily accessible.

It is also beneficial for journalists to work with police to identify locations where they can obtain necessary coverage safely and out of the way of police maneuvers, if those locations were not identified prior to the event.

**Police should regularly share updates with the public and members of the media about demonstration activity and any police response.**

These updates should be shared on the department's own website as well as in social media posts. Some may not trust social media posts on their own because of the risk that bad actors will impersonate government agencies on social media platforms,<sup>19</sup> so information should be duplicated on the department's website.

**Journalists should carry media-issued credentials while covering any event.**

For their own safety, journalists may not wish to have their credentials visible at all times, but they should have them readily and quickly accessible. Journalists may also wish to carry a letter from an editor or their organization's legal department (including contact information) that briefly describes the journalist's assignment.

The Reporters Committee can assist media organizations with securing credentials.

**Police agencies should provide members of the media with an opportunity to show their credentials during any interaction.**

When interacting with individuals recording at a demonstration who identify themselves as a member of the media, police officers should provide them with an opportunity to show their credentials, which may involve reaching into pockets or bags.

As noted earlier, lack of an official media credential should not preclude someone from being identified by law enforcement as a member of the media. Individuals acting as journalists in their function and behavior can be considered media in most circumstances. Signifiers other than media credentials may include carrying a recording device or taking notes.

Officers who deem it necessary to detain someone identifying themselves as a member of the media should notify a supervisor or the incident commander. This supervisor or commander should follow agency protocols regarding arrest determination and contacting the media outlet, if applicable.

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19. Steven Lee Myers, Sheera Frenkel, and Tiffany Hsu, "Tweets Become Harder to Believe as Labels Change Meaning," *New York Times*, April 28, 2023, <https://www.nytimes.com/2023/04/26/technology/twitter-verification-problems.html>.



Dispersal orders should be made loudly and repeatedly and include clear guidance regarding where demonstrators should go. When possible, reporters should be informed ahead of time whether they are exempt from dispersal orders and should be given guidance on what to do if an order is given.

Police should allow members of the media to position themselves in a safe location where they can obtain coverage of events and only clear the immediate area when and where it is necessary for public safety.

Dispersal orders should include the legal basis for the order being given—for example, unlawful blocking of a street preventing access by emergency vehicles—which is guidance that the media representatives at the roundtable also said is extremely helpful. If members of the media are not told the reason the area is being cleared, they may perceive it as an attempt to prevent the demonstration or media coverage of it.

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“I had an event during the BLM protests where the commanding police officer did a great job. The group of protesters sat down in the middle of the street. Police command gave three warnings, and I looked around and really didn’t want to get arrested. He said, ‘Media with credentials, you guys on the sidewalks. And if you want to leave, go to the other sidewalk.’ Law enforcement did a great job. Nobody was injured. At the same time, we were able to get a picture of what happened. I mean, it was the perfect of all scenarios.”

– Alex Brandon, Photojournalist, Associated Press

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**Encirclement should not be used for mass arrests. Encirclement should be used by police only to arrest specific individuals observed committing specific offenses.**

Encirclement should only be used to arrest individuals where probable cause has been established to arrest everyone within the encirclement. It should not be used as a tactic to encircle a large crowd and then arrest only selected people from inside it. Officers should also provide ample warning before any such maneuver and help anyone leave the encirclement who was inadvertently or mistakenly encircled.



Police agencies should clearly explain the parameters of curfews on social media and the department's (or jurisdiction's) website, including that members of the media are exempt.

When a police agency or jurisdiction declares a curfew, it should include the full text of the curfew on social media and its website. The text should include specific information about curfew times, locations, and exemptions. Curfews should include an exemption for members of the media.

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"We've learned to go away from the fixed [protest] lines. We still have special event teams that will come in and fix lines to move larger crowds. But what we do is we have small groups, teams of four, we call them a 'special response team' or 'strike team.' And their job is to go in and deal with the agitated person who could cause the entire demonstration to be shut down, preventing the exercise of First Amendment rights."

– Chief Shon Barnes, Madison (Wisconsin) Police Department

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## After an event

Police agencies should have an after-action review process in place for all operations, including demonstration situations.

All police operations during demonstrations should be reviewed with an eye toward future improvement. Agencies should discuss what went well and where there were shortcomings. This review should include feedback from partner organizations, members of the media, and community groups.

Some media participants in the roundtable expressed concern that they had not been contacted as part of after-action reviews or investigations following past incidents involving their organizations' reporters.







# Tip Sheet

## For police

- Remember that your objectives in responding to a mass demonstration include protecting journalists' and the public's First Amendment rights. Among these rights is the right to record anything—including police activity—occurring in public spaces.
- If an individual says they are a member of the media, give them an opportunity to show their media credentials.
  - Credentials are the easiest way to identify someone as a journalist, but you should also consider individuals without credentials to be a member of the media if they are acting as journalists in function and behavior.
  - Signifiers other than credentials may include carrying a recording device or taking notes.
  - If you are unsure whether an individual should be considered a member of the media, consult a supervisor, commanding officer, or public information officer.
- If you determine that an individual (including an individual claiming to be a journalist) needs to be detained for suspected illegal actions, you should be able to articulate (or record on body-worn camera) the specific actions for which they were detained.
  - If an individual claims to be a journalist after you detain them, follow agency policy and immediately contact a supervisor or incident commander. Do not charge the individual without supervisory approval, and contact the commanding officer and public information officer when possible.
- Dispersal orders should be made loudly and repeatedly, and officers should ensure a clear route and a reasonable amount of time for people to disperse. If officers must move reporters when enforcing a dispersal order, reporters should be given guidance on safe locations where they can continue to cover the event.
- Before using less-lethal munitions (gas balls, tear gas, etc.), provide a clear audible warning to demonstrators and members of the media and give them a reasonable amount of time to comply.
- Follow agency guidance to exempt members of the media from curfew orders.
- Encirclement should be used only to arrest specific individuals suspected of engaging in illegal behavior. All other demonstrators and members of the media should not be encircled and should be given notice, opportunity, and guidance to leave the relevant area.





## For members of the media

- Have your media credentials readily accessible. For your own safety, you may not want to have them visible, but be ready to quickly show them to police.
- If possible, identify yourself to a police supervisor when arriving at the scene of a demonstration and consult with police to identify locations where you can safely obtain necessary coverage.
- When possible, clearly identify yourself to police if dispersal orders are made or less-lethal munitions (gas balls, tear gas, etc.) are used.
- When officers enforce a dispersal order, comply with requests from police to move to locations where you will be out of the way of police maneuvers but can still cover the incident.



# Attendees at the October 3, 2023, Roundtable

*Positions and organizations reflect the individuals' affiliations at the time of the meeting.*

## Police representatives

- Malik Aziz, Chief, Prince George's County (MD) Police Department
- Al Baker, Director of Communications, New York State Unified Court System
- Shon Barnes, Chief, Madison (WI) Police Department
- Jeffery Carroll, Assistant Chief, Washington (D.C.) Metropolitan Police Department
- Michael Cox, Commissioner, Boston Police Department
- Christopher Dennison, Assistant Chief, Tucson (AZ) Police Department
- Adrian Diaz, Chief, Seattle Police Department
- Anthony Guglielmi, Chief of Communications, U.S. Secret Service
- Mike Harrison, ret. Commissioner, Baltimore City (MD) Police Department
- Maris Herold, Chief, Boulder (CO) Police Department
- Heather Hough, Chief of Staff, Milwaukee (WI) Police Department
- Johnny Jennings, Chief, Charlotte-Mecklenburg (NC) Police Department
- Melron Kelly, Deputy Chief, Columbia (SC) Police Department
- Brad Koch, Major, Charlotte-Mecklenburg (NC) Police Department
- Howard Ludwig, Speech Writer, U.S. Secret Service
- Tom Manger, Chief, U.S. Capitol Police
- Nicole Taub, Chief of Staff, Boston Police Department
- Jamie Tompkins, Chief of Staff, Seattle Police Department



## Media representatives

- Luke Barr, Reporter, ABC News
- Alex Brandon, Photojournalist, Associated Press
- Shelby Coffey, Senior Fellow of Freedom Forum and Newseum Trustee
- Shelly Cohen, Assistant Editorial Page Editor, *Boston Globe*
- Jack Date, Senior Coordinating Producer, ABC News
- Caroline Drees, Senior Director of Field Safety and Security, NPR
- Sam Feist, D.C. Bureau Chief, CNN
- Sara Forden, Leader of D.C. legal team, Bloomberg
- Dom Fracassa, Washington Editor, *San Francisco Chronicle*
- Jamie Graff, Justice and Judiciary Editor, *Wall Street Journal*
- Lorenzo Hall, Anchor and Reporter at WUSA, Tegna
- Margaret Ho, Assistant Editor of Legal Coverage, *New York Times*
- Kimbriell Kelly, Washington Bureau Chief, *Los Angeles Times*
- Mark Lima, Vice President & Bureau Chief, CBS
- Paul McGonagle, Vice President and News Director, Fox Television Stations
- Linda Patillo, Deputy Managing Editor, Scripps News
- Joe Shaw, General Manager of Editorial Operations, Reuters
- Drew Shenkman, Vice President, Legal, CNN
- Ken Strickland, Washington Bureau Chief, NBC
- Pierre Thomas, Senior Justice Correspondent, ABC News
- Claudia Uceda, Correspondent, TelevisaUnivision
- David Vigilante, Executive Vice President and General Counsel, CNN
- Jerry Walsh, Senior Vice President of Local Content Development, Nexstar



## U.S. Department of Justice representatives

- Vanita Gupta, Associate Attorney General, Office of the Associate Attorney General
- Robert Moossy, Deputy Assistant Attorney General, Civil Rights Division
- Hugh T. Clements, Jr., Director, COPS Office
- Robert E. Chapman, Deputy Director, COPS Office
- Shanetta Y. Cutlar, Senior Counsel to the Director, COPS Office
- Deborah Spence, Assistant Director, COPS Office
- Katherine McQuay, Senior Communications Advisor, COPS Office
- Billie Yrlas Coleman, Supervisory Senior Policy Analyst, COPS Office

## Meeting organizers

- Rachel Apfelbaum, Senior Research Associate, Police Executive Research Forum
- Zoe Mack, Senior Research Assistant, Police Executive Research Forum
- James McGinty, Senior Principal, Police Executive Research Forum
- Rachael Thompson, Research Assistant, Police Executive Research Forum
- Dustin Waters, Communications Associate, Police Executive Research Forum
- Chuck Wexler, Executive Director, Police Executive Research Forum
- Bruce Brown, Executive Director, Reporters Committee for Freedom of the Press
- Gabe Rottman, Director, Technology and Press Freedom Project, Reporters Committee for Freedom of the Press
- Jamie Gorelick, Partner, WilmerHale
- Aaron Zebley, Partner and Attorney, WilmerHale






# About PERF

The **Police Executive Research Forum (PERF)** is an independent research organization that focuses on critical issues in policing. Since its founding in 1976, PERF has identified best practices on fundamental issues such as developing community policing and problem-oriented policing, using technologies to deliver police services to the community, and evaluating crime reduction strategies. Over the past decade, PERF has led efforts to reduce police use of force through its guiding principles on use of force<sup>20</sup> and innovative Integrating Communications, Assessment, and Tactics (ICAT) training program.<sup>21</sup> All of PERF's work benefits from PERF's status as a membership organization of police officials, academics, government leaders, and others with an interest in policing and criminal justice.

PERF has extensive previous experience examining issues raised by mass demonstrations. PERF's 2022 report *Rethinking the Police Response to Mass Demonstrations*<sup>22</sup> used the lessons learned during the 2020 demonstrations as the basis of recommendations for preparing for and responding to the current landscape of mass demonstrations. The report's overarching goal was to help police agencies "achieve the twin goals of safeguarding First Amendment rights and protecting public safety." Unlike the current report, the 2022 report did not focus on police-media interactions at mass demonstrations.

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20. PERF (Police Executive Research Forum), *Guiding Principles on Use of Force*, Critical Issues in Policing Series (Washington, DC: Police Executive Research Forum, 2016), <https://www.policeforum.org/assets/guidingprinciples1.pdf>.
  21. "ICAT: Integrating Communications, Assessment, and Tactics – A Training Guide for Defusing Critical Incidents," Police Executive Research Forum, accessed April 5, 2024, <https://www.policeforum.org/icat>.
  22. PERF, *Rethinking the Police Response to Mass Demonstrations* (see note 1).



Other past PERF reports on policing mass demonstrations include the following:

- *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned* (2018)<sup>23</sup>
- *Handling Large, Preplanned Events: Recommendations from Preparations for the 2016 National Political Conventions* (2018)<sup>24</sup>
- *Managing Major Events: Best Practices from the Field* (2011)<sup>25</sup>
- *Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches* (2006)<sup>26</sup>

In 2004, PERF and the Freedom Forum hosted a roundtable discussion with police executives and media representatives, including longtime journalists Shelby Coffey III and John Seigenthaler.

## About the Reporters Committee for Freedom of the Press

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association founded by journalists and media lawyers in 1970, when the nation's press faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

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23. PERF (Police Executive Research Forum), *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned* (Washington, DC: Police Executive Research Forum, 2018), <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf>.

24. PERF (Police Executive Research Forum), *Handling Large, Preplanned Events: Recommendations from Preparations for the 2016 National Political Conventions* (Washington, DC: Police Executive Research Forum, 2018), <https://www.policeforum.org/assets/HandlingLargePreplannedEvents.pdf>.

25. PERF (Police Executive Research Forum), *Managing Major Events: Best Practices from the Field*, Critical Issues in Policing Series (Washington, DC: Police Executive Research Forum, 2011), [https://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf](https://www.policeforum.org/assets/docs/Critical_Issues_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf).

26. Tony Narr et al., *Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches*, Chief Concerns (Washington, DC: Police Executive Research Forum, 2006), [https://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/police%20management%20of%20mass%20demonstrations%20-%20identifying%20issues%20and%20successful%20approaches%202006.pdf](https://www.policeforum.org/assets/docs/Critical_Issues_Series/police%20management%20of%20mass%20demonstrations%20-%20identifying%20issues%20and%20successful%20approaches%202006.pdf).





# About the COPS Office

The **Office of Community Oriented Policing Services (COPS Office)** is the component of the U.S. Department of Justice responsible for advancing the practice of community policing by the nation's state, local, territorial, and tribal law enforcement agencies through information and grant resources.

Community policing begins with a commitment to building trust and mutual respect between police and communities. It supports public safety by encouraging all stakeholders to work together to address our nation's crime challenges. When law enforcement and communities collaborate, they more effectively address underlying issues, change negative behavioral patterns, and allocate resources.

Rather than simply responding to crime, community policing focuses on preventing it through strategic problem-solving approaches based on collaboration. The COPS Office awards grants to hire community policing officers and support the development and testing of innovative policing strategies. COPS Office funding also provides training and technical assistance to community members and local government leaders, as well as all levels of law enforcement.

Since 1994, the COPS Office has been appropriated more than \$20 billion to add community policing officers to the nation's streets, enhance crime fighting technology, support crime prevention initiatives, and provide training and technical assistance to help advance community policing. Other achievements include the following:

- To date, the COPS Office has funded the hiring of approximately 138,000 additional officers by more than 13,000 of the nation's 18,000 law enforcement agencies in both small and large jurisdictions.
- More than 800,000 law enforcement personnel, community members, and government leaders have been trained through COPS Office-funded training organizations and the COPS Training Portal.
- More than 1,000 agencies have received customized advice and peer-led technical assistance through the COPS Office Collaborative Reform Initiative Technical Assistance Center.
- To date, the COPS Office has distributed more than nine million topic-specific publications, training curricula, white papers, and resource CDs and flash drives.

The COPS Office also sponsors conferences, roundtables, and other forums focused on issues critical to law enforcement. COPS Office information resources, covering a wide range of community policing topics such as school and campus safety, violent crime, and officer safety and wellness, can be downloaded via the COPS Office's home page, <https://cops.usdoj.gov>.





Following the summer of 2020, in which a wave of protests swept over the United States and law enforcement and journalists at those events were often in conflict rather than in harmony with one another, the Police Executive Research Forum and the Reports Committee for Freedom of the Press convened a COPS Office–supported roundtable to discuss police-media relations and interactions, especially at mass protests. This publication presents the recommendations arising from that meeting, which lay out guidance for both law enforcement agencies and media organizations on actions to take before, during, and after protests and other mass gatherings to ensure all are able to perform their duties safely and successfully.



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