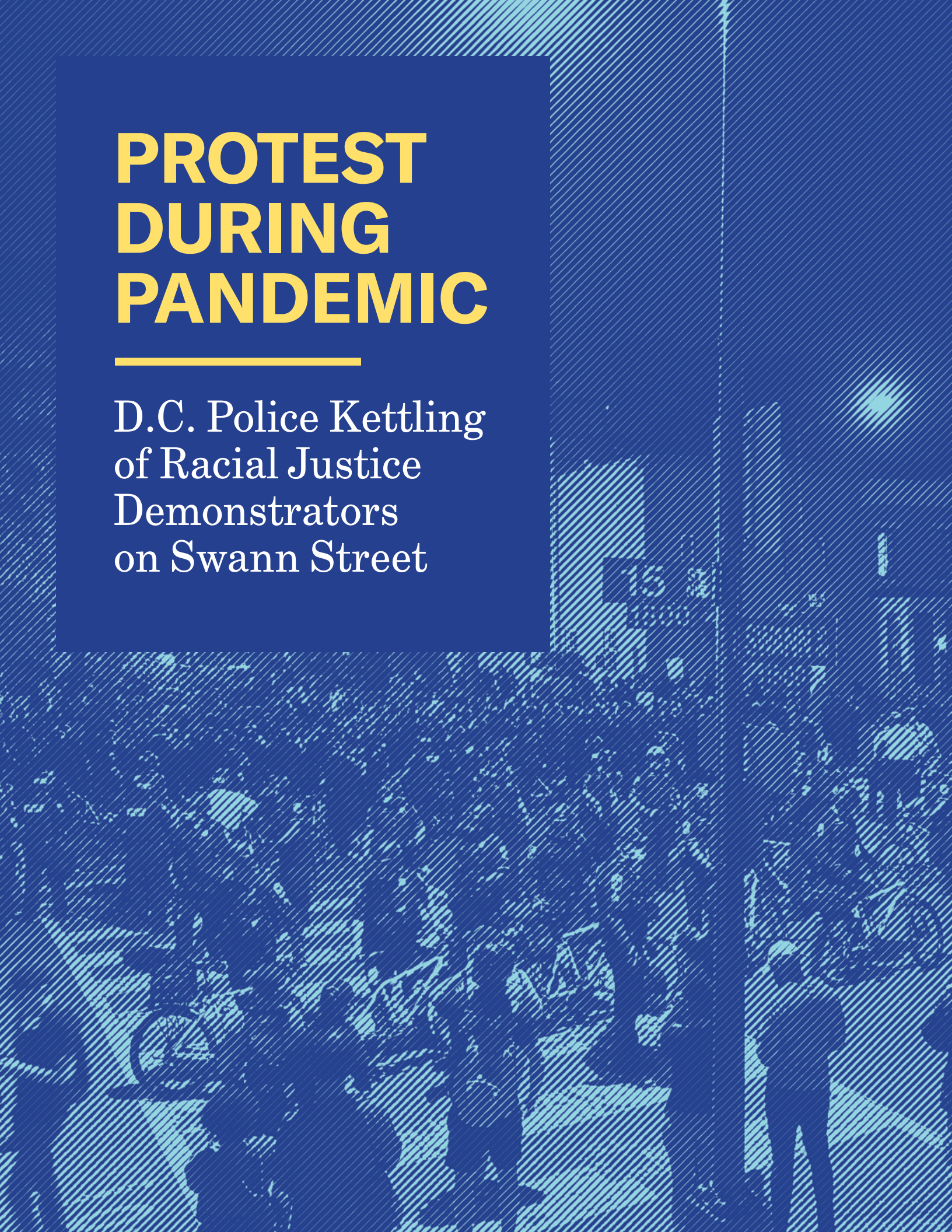


PROTEST DURING PANDEMIC

D.C. Police Kettling
of Racial Justice
Demonstrators
on Swann Street



Acknowledgements

This report is a collaboration of the ACLU of the District of Columbia, Washington Lawyers' Committee for Civil Rights and Urban Affairs, and Sidley Austin LLP. The principal contributors to the report were Christopher Eiswerth, Jacquelyn Fradette, and Kwaku Akowuah of Sidley Austin, Scott Michelman and Arthur Spitzer of the ACLU-DC, and Kaitlin Banner of the Washington Lawyers' Committee.

The authors are very grateful to all of the protestors and residents of Swann Street who were interviewed by Sidley Austin and the ACLU and provided photos, video, and shared their experiences for this report. Your stories made this report possible.

We would also like to thank Elaine Stamp of the ACLU-DC and Tristin Brown, Dennis Corkery, Hannah Lieberman, and Marisol Zarate of the

Washington Lawyers' Committee for their assistance coordinating initial intake and outreach. Additionally, we would like to thank the following Sidley attorneys for conducting witness interviews: Dean Forbes, Jennifer Haney, Justin Becker, Wandaly Fernandez, Becket Marum, Sally Bohmfalk, Michele Aronson, Katy Ho, David Goldenberg, Kai Knight, Joshua Moore, and William Chorba. Special thanks to Amanda Norton, Michaelene Hanley, Adam Kleven, and Eli Nelson for their support and analysis, and to Mark Herzog for inspiring us each and every day.

Graphic design for this report was provided by Astrid Da Silva.



Introduction

On the evening of June 1, 2020, the Metropolitan Police Department (MPD) deployed significant force in and around Swann Street, a narrow residential street in Northwest D.C. The police ultimately arrested about 200 people who had been protesting police brutality and excessive force in the wake of George Floyd’s murder. These protesters were arrested on a single, common charge—violation of the Mayor’s 7:00 p.m. curfew. Protesters started their evenings in different parts of the city, including in Lafayette Park where law enforcement had utilized chemical irritants, pepper balls, and batons a few hours earlier against peaceful demonstrators. Few of the protestors had known each other until they were forced together by MPD officers, who used flashbangs and barricades to steer disparate protestors onto that single residential block.

After funneling the protesters from nearby streets onto Swann Street between 14th and 15th Streets, the police barricaded both ends of the block,

“kettling” the crowd. The police on one end of the street advanced and arrested protesters for violating the curfew. They handcuffed the protesters with zip-ties and transported them across the District to the grounds of the MPD Academy in the District’s Southwest quadrant. There, many were crammed into holding cells, notwithstanding contrary federal and D.C. government COVID-19 recommendations; they were not released for hours. On the other end of Swann Street, the police closed in on the crowd, using shields and pepper spray, and a number of protestors fled. Approximately 80 of them took refuge in nearby townhouses, avoiding arrest only because Swann Street residents were willing to shield protestors from the tactics being used by local police.

As the Council continues its oversight of MPD and MPD conducts its own internal review, we offer this report of MPD’s actions on Swann Street in June and their effects on D.C. residents and workers.

The report is based on interviews with more than 50 individual eyewitnesses. Some of these witnesses were protestors who were kettled on Swann Street. Others were residents of Swann Street who viewed the events from their homes. In addition, we reviewed photos and video footage taken during the June 1 events, as well as other evidence available from the existing public record. Based on this review, we have identified multiple serious questions raised by MPD's actions that night and the potential need for improved guidance from the people's representatives on the proper means for responding to peaceful First Amendment assemblies.

MPD had another option on the night of June 1: they could have sent protesters home. According to the protestors we spoke to, MPD never attempted to do so. The protestors uniformly reported that they never heard the police give a dispersal order directing them to go home during the time the protestors were marching along city streets; many also testified that once kettled on Swann Street, they asked the police for permission to go home. Rather than grant that permission, MPD chose to close ranks with riot shields, press the protestors closer together on the narrow street, and arrest them, at times deploying pepper spray in pursuit of that aim. MPD made that choice even though, after arresting hundreds of people, they charged each of them with only a simple curfew violation, and despite pandemic conditions that rendered the necessary close confinement of large groups after arrest a serious risk to the health of the demonstrators and the public at large.

Given the absence of support for more serious charges, MPD could and should have acted with greater restraint on Swann Street. The Council should consider whether D.C. law or policy should be changed to promote a more restrained police response to peaceful protests in the District.

Background

On May 25, 2020—Memorial Day—the Minneapolis police arrested George Floyd, a Black man in his forties, on suspicion of purchasing cigarettes using a counterfeit \$20 bill. The police handcuffed him, placed him face down on the ground, and then one officer kneeled on Mr. Floyd’s neck for more than eight minutes. Mr. Floyd cried out that he could not breathe and pleaded for his deceased mother. The officer did not remove his knee.¹¹ Bystanders recorded the scene on their phones and begged the police to stop. The officer did not remove his knee, and Mr. Floyd was pronounced dead a little over an hour after the police arrived on the scene. The next day, the Minneapolis Police Department released a statement claiming “Man Dies After Medical Incident During Police Interaction.”¹² But cell phone videos demonstrated in searing fashion the nature of Mr. Floyd’s death. By that afternoon, demonstrators filled the streets of Minneapolis, and more returned over the next few nights.

The protests quickly spread to cities across the country. People of all races and all walks of life gathered peacefully and in massive numbers to march and demand change to the unnecessary and deadly use of force employed by police against Black people. Unfortunately, these peaceful protests were also accompanied in some instances by vandalism, or even outbreaks of violence.

Events took a similar course in the District. Thousands gathered to peacefully protest throughout the city. But on May 30, there was some vandalism downtown; vehicles and stores were set on fire. Arrests were made.¹³

On May 31, Mayor Muriel Bowser declared a public emergency and imposed an 11:00 p.m. curfew.¹⁴ While significant numbers of people peacefully protested throughout the day, there was destruction of property and looting that night.¹⁵

Mayor Bowser declared another public emergency on June 1 and imposed a 7:00 p.m. curfew

11 Victor J. Blue, What We Know About the Death of George Floyd in Minneapolis, N.Y. Times (Feb. 11, 2021), <https://www.nytimes.com/article/george-floyd.html?action=click&module=RelatedLinks&pgtype=Article>.

12 Andy Mannix, Minneapolis Police Cite ‘Fluid’ Situation for Troubling Misinformation Released After George Floyd Death, Star Tribune (June 3, 2020), <https://www.startribune.com/mps-police-still-haven-t-explained-misinformation-after-floyd-s-death/570970152/>.

13 David Smith, George Floyd: Protestors Clash with Secret Service As Unrest Comes to the White House, The Guardian (May 30, 2020), <https://www.theguardian.com/us-news/2020/may/30/protest-washington-dc-george-floyd-white-house-trump>

14 D.C. Mayor’s Order 2020-068 (May 31, 2020), <https://thedcline.org/wp-content/uploads/2020/05/Mayors-Order-2020-068.pdf>.

15 Rebecca Tan et al., Night of Destruction Across D.C. After Protesters Clash With Police Outside White House, Wash. Post (June 1, 2020), https://www.washingtonpost.com/local/dc-braces-for-third-day-of-protests-and-clashes-over-death-of-george-floyd/2020/05/31/589471a4-a33b-11ea-b473-04905b1af82b_story.html.



Law enforcement used tear gas to clear protestors away for President Trump’s photo in front of St. John’s Episcopal Church. Photo: Derek Baker

for that night and the next.¹⁶ She ordered that “[d]uring the hours of the curfew, no person, other than persons designated by the Mayor, shall walk, bike, run, loiter, stand, or motor by car or other mode of transport upon any street, alley, park, or other public place within the District.” *Id.* The order carved out exemptions for essential workers, persons engaged in activities related to the June 2 D.C. primary election, and travel to and from hospitals. *Id.*

Peaceful protesters again took to the District’s streets on June 1 to express their outrage at the murder of George Floyd and police brutality. Lafayette Park was a primary gathering point for

the protests until approximately 6:30 p.m., when law enforcement officials violently cleared peaceful protestors from the area prior to the staging of a photo opportunity for President Trump in front of St. John’s Church.¹⁷

¹⁶ D.C. Mayor’s Order 2020-069 (June 1, 2020), <https://thedcline.org/wp-content/uploads/2020/06/Mayors-Order-2020-069.pdf>.

¹⁷ See Tom Jackman et al., *Police in D.C. Make Arrests After Sweeping Peaceful Protesters from Park with Gas, Shoving*, Wash. Post (June 2, 2020), <https://www.washingtonpost.com/dc-md-va/2020/06/01/dc-protest-george-floyd-white-house/>.

MPD Kettled Civil Rights Protesters

After Lafayette Park was cleared and President Trump had his photograph taken, some demonstrators continued protesting in other locations throughout the city after 7:00 p.m., when the curfew went into effect.

The protesters who were ultimately kettled on Swann Street traveled to that location from several different directions.

Some of them were first in Lafayette Park and, after being forced out, marched north on 14th Street toward Columbia Heights. Other people, including restaurant workers ending their shifts and law students outraged by the events in Lafayette Park, ventured outside and joined others whom they saw marching. Still others marched from Dupont Circle, where they were participating in a vigil for Tony McDade, a transgender man killed by police in Tallahassee, Florida. Some from this Dupont Circle group marched east towards 14th Street, eventually joining some of the people marching north on 14th Street and others approaching Swann Street from the south. Overall, the individuals we interviewed described disparate and loose groups of people marching around the area. They described an organic situation with no single agenda, organizer, or marching plan for the evening. Most wore masks to protect themselves from COVID-19 exposure.

As they marched through the District, numerous demonstrators interviewed noticed an increased police presence. For instance, protestors marching north on 14th Street reported that they observed police officers gathering at intersections and blocking them from turning onto side streets.

Witnesses also reported that police cruisers periodically zoomed by them; the protestors viewed this as an effort to intimidate the larger groups and noted that it had the effect of splintering the groups into smaller contingents. Seeking to stay away from the streets or areas blocked off by the police, most protestors interviewed described turning away from side streets whenever police were observed to be blocking the path. Protestors interviewed expressed that they sought to avoid clashes with the police and that they wished to keep marching. As a result, many of these protesters then made their way north on 14th Street toward Columbia Heights; it initially appeared that 14th Street, unlike the side streets, was being left open by MPD. Shortly after crossing Florida Avenue, however, the protestors described meeting a line of police and police cars and being turned back by flashbangs. These protestors then turned onto Florida Avenue, heading west in the direction of 15th Street. They described police cruisers again blocking their path along Florida Avenue, and so they turned south onto 15th Street—along the one path apparently left open to them by police.

As the protestors made their way south on 15th Street, in the area of the Swann Street intersection, they reported being met by MPD officers with helmets and riot gear blocking their way. To avoid the police, the protestors turned onto Swann Street. Other protestors described being similarly funneled toward Swann Street, having marched north on 15th Street and met police along side streets blocking their paths away.

After the protestors turned onto Swann Street, they noticed the police line close behind them and saw that their exit was cut off on both ends of the street. No dispersal orders were heard by the protestors interviewed, and they were given no opportunity to stop demonstrating and go home. Both the protestors and residents of Swann Street interviewed observed that the police formed ranks and used bicycles to block the exits and side streets.

MPD has sought to justify the force employed on Swann Street based on violence committed by *different* individuals in *different* places the previous night, a fear that violence would be repeated, reports of a burning police cruiser (which no interviewee witnessed), and a few thrown water bottles. For example, then MPD Chief Newsham sought to explain the decision to kettle by stating that “[t] here were projectiles thrown” by the group of protestors moving north on 14th Street, that “[an] MPD police car was set on fire,” and that “there was indication that [the] group[s] could be involved in similar behavior” to that which occurred on previous nights.¹¹ However, the protestors who were interviewed provided a very different version of events. None reported seeing an MPD police car on fire. None reported seeing any acts of vandalism or looting. None reported seeing acts of violence towards non-protesting individuals, police, or other protestors. A few interviewees reported seeing a handful of protestors throw water bottles as they were marching earlier in the evening—but they also emphasized that other protestors immediately interceded to prevent recurrence. In sum, no person interviewed reported witnessing violent conduct in or around the protest. Nonetheless, MPD chose to kettle the protestors.

For the first 30 minutes after the protestors were kettled on Swann Street, the situation remained largely static—increasing numbers of police blocked the exits, remaining largely silent, and

the protestors were penned in on the block. Some protestors reported that they asked to leave and go home, but the police remained silent and did not let them through. At one point, there were reportedly chants of “let us leave!” One man reportedly asked to return to his home a few blocks away, and he was told “no, get the hell back there.”

Some spectators stood outside the kettle on the 15th Street side of the block watching events unfold. Protestors reported seeing these spectators but that, to their knowledge, the spectators were not detained or arrested or put into the kettle.

At this point in the evening, MPD faced a choice. Having now trapped the protestors on Swann Street, it could have ordered them to disperse—allowing them to leave the block one-by-one or in small groups. Instead, MPD decided to arrest all of the protestors, to deploy force, and to charge the protestors with having violated the 7:00 p.m. curfew order.

8 Rough transcript, D.C. Council Committee on the Judiciary and Public Safety, Budget Oversight Hearing (June 9, 2020), available at http://dc.granicus.com/TranscriptViewer.php?view_id=2&clip_id=5475.

MPD Kettles More than 200 Protestors





Swann Street resident Rahul Dubey (second from left) with some of the more than 50 protestors he sheltered the night of June 1. That night D.C. Police tried to access the home and even sprayed tear gas through the windows. Photo: Joe Flood

At about 9:30 p.m., the police began shouting “move back” and advancing in lines from both ends of Swann Street, using transparent riot shields to force protestors back. After about 30 minutes, the two groups were compressed into the middle of the block. Residents of Swann Street we interviewed reported that they also heard the police chant “move back” and saw from their windows the police line walking forward and compressing the protestors towards the center of the block. Protestors reported that very few officers were wearing face masks.

On the 14th Street end of Swann Street, arrests started soon after the police advanced. MPD began arresting groups of men first. Witnesses reported that a number of women then moved to the front of the crowd in an effort to shield others; they too were arrested and placed in zip-ties. Thereafter, witnesses stated, the protestors on this end of the block sat down, and the police sought volunteers for arrest, alternately taking groups of men and women six to ten at a time for the next several hours.

On the 15th Street end of Swann Street, the scene unfolded differently. When the police advanced, some protestors stood their ground and were pushed back and pepper sprayed. Protestors fell or were shoved to the ground; some tried to flee. The protestors described a mash of bodies and bumping into each other as they tried to move back to avoid the line of police and to help falling protestors up. Some were unable to see or open their eyes because of the pepper spray. One protestor, after being pushed back by riot shields and getting pepper spray in his eyes, fell backwards and was pinned between the police and a parked car.

Several residents of Swann Street invited protestors into their homes to flee the pepper spray, which hung heavy in the air and filled the first level of at least one house. The protestors described coughing, crying, and an intense burning sensation. Some described pouring milk on the protestors most directly hit by the pepper spray in an effort to soothe the burning sensation. About 80 protestors

found shelter in these homes. The police reportedly “[b]eliev[ed] that there were burglaries occurring and residences were being entered” and that was, according to MPD, part of the reason “police deployed pepper spray.”¹¹ But we did not find support for that assertion, and Chief Newsham later conceded that this belief was “mistaken.”¹² Witnesses interviewed reported that the protesters were invited in and given aid and shelter, and protesters posted to that effect on social media while they were inside the houses.

Witnesses stated that, throughout the night, MPD officers used what appeared to be ruses to enter the Swann Street homes, evidently so they could arrest protesters for curfew violations. At first, police came to the front door of the house holding the largest number of protesters, seeking entry supposedly to provide medical assistance. The resident denied the police entry, however. The protesters performed first aid and attempted to alleviate the effects of the pepper spray as best they could. Later, numerous officers moved into the backyard of a home and were told by the home’s occupant to leave because they lacked a warrant. In another instance, the police sought entry into a home, claiming that someone inside

a house had reportedly called 911—but multiple witnesses affirmatively rejected this assertion in our interviews. In addition, other witnesses reported that two persons appearing to be protesters were able to walk past approximately a dozen officers and tried to enter a residence, only to be turned away because those inside the house suspected that they were undercover police.

The protestors who sheltered inside the townhouses described watching the police arrest the individuals in the street in an “assembly line” for much of the night. MPD officers continued to surround the townhouses where protesters were sheltering, even after all of the protesters in the street had been arrested. The protesters believed that, if any of them left the houses, they would be arrested too. Protesters reached out to attorneys and the media, who arrived on the scene during the night. Around 4:00 in the morning, MPD

officers left Swann Street. At about 6:00 am, when the curfew lifted, the protesters who had sheltered in Swann Street townhouses departed. We are not aware of any report that any of these protesters caused any disturbance upon leaving Swann Street.



Emergency in DC:

Police cornered 100 protesters on Swann Street & fired pepper spray. Several homeowners gave the protesters shelter, but the officers are waiting outside & arresting anyone who leaves. Now police are entering homes.

Tell [@MayorBowser](#) to let protestors go home.



9:48 PM · Jun 1, 2020 · Twitter for iPhone

Photo credit: Arjun Sethi

11 Sophia Barnes, DC Police Chief Defends Officers After Protesters Hid in Swann Street Home, NBC Washington (June 3, 2020), <https://www.nbcwashington.com/news/local/dc-police-chief-defends-officers-after-protesters-hid-in-swann-street-homenorthwest/2321624/>.

12 Id.

The Arrested Protesters Were Detained and Booked

For those protestors who were arrested, the rest of the evening unfolded in other parts of the city, as they were transported across the District, processed, charged, and eventually released.

When protesters were arrested, MPD zip-tied their hands. Witnesses reported that these zip-ties were often very tight, to the point of causing bruising and pain for some protesters. Despite requesting to have the ties loosened, one protester reported that the officer said, “They’re tight, huh?,” and then tightened the restraints further. Numerous protesters reported that they were zip-tied all night and did not have the zip-ties removed until 5:00 or 6:00 a.m.

MPD photographed the protesters upon arrest and pulled their facemasks down to do so. The protesters reported varying degrees of success in reapplying their masks. With their hands tied, many protesters were unable to reposition their masks to again cover their noses and mouths and said that MPD officers did not assist their efforts to do so. Other protestors reported, in contrast, that the officers who photographed them did reposition their masks after the photograph. The protesters (some masked, and some now unmasked) were then loaded into vans and many were transported to the Washington Convention Center.

At the Convention Center, the protesters were reportedly held for an hour or longer and then moved to buses that accommodated more people. Witnesses stated that they were not permitted to use the restroom or obtain water while they sat in the

buses and vans. Some were held in buses or vans the entire evening. There was somewhat more room for social distancing on the buses, but many protesters’ masks were still not covering their noses and mouths. MPD ultimately transferred the arrested protesters to the Police Academy in Southwest DC.

Once the protesters arrived at the Police Academy, they were detained in one of three settings. Some were held outside. They were placed on the curb, zip-ties in place, and remained there—some for several hours. Some of the protesters eventually had access to portable toilets, but not running water to wash their hands.

A second group of protesters was moved from the buses into cinder-block rooms about the size of a high-school classroom. While some protesters had their zip-ties removed once they reached these rooms, many others reported they had their zip-ties on the entire night and only had them removed when they were released. The protesters held in classrooms reported that they were packed densely in the rooms and there was not sufficient space for social distancing. Consistent with those reports, one protester estimated that between 50 to 80 men were held in one of these rooms at one time. The police also collected the women’s jewelry. Protesters observed that most police were not wearing gloves as they removed the jewelry and did not clean their hands in between. Although protesters who had their zip-ties removed were able to reposition their facemasks, social distancing in these rooms was impossible. MPD at some point brought some of the protesters a

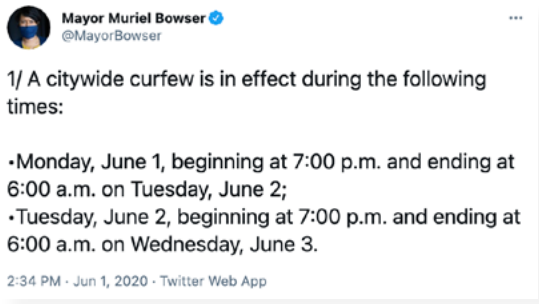


handful of peanut butter sandwiches and bottles of water to share.

A third group of protesters remained on the buses the entire evening until processed.

When the protesters were processed, their fingerprints and mugshots were taken, and they were charged with violating curfew and given court dates. They were then released into the Academy's parking lot, where they were left to find rides home as late as 7:15 a.m. Protesters reported that there were volunteers at this drop off point who gave the protesters water and helped to arrange for rides home.

Timeline of Events | June 1 - June 2, 2021

- ~6:30 PM** ○ Protesters are tear-gassed at Lafayette Square prior to President Trump's photo op in front of St. John's Episcopal Church.
- 7:00 PM** ○ Mayor Bowser's curfew goes into effect.


The screenshot shows a tweet from Mayor Muriel Bowser (@MayorBowser) with a blue verified badge. The text of the tweet reads: "1/ A citywide curfew is in effect during the following times: -Monday, June 1, beginning at 7:00 p.m. and ending at 6:00 a.m. on Tuesday, June 2; -Tuesday, June 2, beginning at 7:00 p.m. and ending at 6:00 a.m. on Wednesday, June 3." The tweet is timestamped "2:34 PM · Jun 1, 2020 · Twitter Web App".
- ~8:30 - 9:00 PM** ○ D.C. Police begin kettling protestors on Swann Street.
- ~9:30 PM** ○ D.C. Police begin pepper spraying protestors.
- ~9:30 PM and onward** ○ Protestors retreat and shelter in Swann Street homes, including the home of Rahul Dubey.
- ~10:00 PM and onward** ○ D.C. Police begin arresting and transporting protestors to the Washington Convention Center, then to the Police Academy in Southwest.
- ~4:00 AM** ○ MPD officers depart Swann St. after trying all night to access homes where protestors are sheltered.
- ~6:00 AM** ○ Mayor Bowser's curfew is lifted.
- ~7:15 AM** ○ The last of the detainees are released from MPD custody.

The Events of June 1 Raise Serious Questions About MPD's Conduct & Decision-Making

Many protesters we interviewed reported that the night of June 1 left a searing impression on them. Some reported being bruised from the zip-ties, having scrapes and other injuries from being pushed by riot gear, and continuing to have irritated eyes from the pepper spray. A greater number of the protestors we interviewed focused on the emotional effects of the evening. Many described their experience as traumatic, frightening, or humiliating. Protestors likewise reported that their experiences caused them to further distrust the police's discretion and use of force, and led them to worry about COVID-19 exposure.

Looking back on the events of June 1, many protestors questioned why their decision to continue a peaceful protest on a matter of critical public importance—even past a curfew deadline—was met with a massive show of force, chemical irritants, detention, and treatment that affirmatively increased their vulnerability to contracting COVID-19. Many have difficulty understanding why they were never given an order to disperse and an opportunity to go home, and why the police seemed so determined to arrest and zip-tie them for a minor infraction.¹¹ The authors of this report urge the Council to examine the following fundamental points, which flow from the protestors' questions and experiences.

1. Why did MPD decide to kettle and arrest hundreds of peaceful protesters without giving them an opportunity to disperse?

The harms inflicted on the June 1 protesters stemmed from MPD's decision to kettle and arrest them. These harms are the entirely foreseeable results of detaining and arresting over 200 people in a confined space during a pandemic. Yet it is unclear what event or factors justified this decision.

In the end, the protesters were charged with violating curfew and given citations and court dates for their civil disobedience. Although in later statements the police stated that a car had been set on fire elsewhere and expressed concerns about break-ins at businesses, none of the protesters who were arrested were charged with such offenses. Numerous protesters told the police before the lines started to close in that they were prepared to return home. They were not given that opportunity.

Would not letting them return home de-escalate the situation and accomplish the goals of the curfew? Why was it necessary to arrest and detain individuals for a curfew violation, particularly at a time when the process of conducting a mass arrest necessarily exacerbated the risks to police and the protestors of contracting and spreading COVID-19?¹² For the future, what standards should be in place when deciding whether to arrest individuals for curfew

11 The penalty provision of the curfew order is the District of Columbia's Municipal Regulations: 24 DCMR § 2203.4.

12 It appears that under MPD's General Order EO-20-011, Attach. A, https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/Executive%20Order%20on%20COVID-19%20Modified%20Citation%20Release.pdf, pertaining to citation release criteria, the protestors were eligible for citation release.

violations? Permitting MPD total discretion to arrest and cite any individual outside after curfew creates a significant risk of viewpoint or other discrimination.

The Council should direct MPD to develop guidance that would cabin MPD's discretion to arrest individuals for curfew violations, especially in situations where doing so may itself be dangerous. The District's First Amendment Assemblies Act expresses a preference for issuing dispersal orders rather than engaging in mass arrests, embodying the public policy of the District. See D.C. Code § 5-331.07. The Council should consider amending the Act to *require* that police attempt to disperse an unlawful but non-violent assembly in accordance with the requirements of the Act before engaging in kettling tactics or arrests.

We further urge the Council to review the decision-making process of MPD with respect to kettling and to require the police to consider and issue guidance on the appropriate situations in which this escalatory tactic can be used based on curfew violations. The First Amendment Assemblies Act currently permits kettling or mass arrest of protesters only "where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts." D.C. Code § 5-331.08. When protests proceed past a curfew, however, that "significant number" trigger may in many circumstances be satisfied by the mere fact that many people are engaging in precisely the expressive protest conduct that the First Amendment Assemblies Act was designed to protect. Put more bluntly: under current District law, curfew orders expose non-violent protesters to mass arrest. The Council should consider modifying the Act to more closely regulate how mass arrest and kettling tactics may be used when curfew orders are in effect.

2. What efforts did MPD make to verify their evident suspicions that the protests in and around 14th Street could turn violent before kettling and arresting protesters?

Former Chief Newsham stated that the decision to kettle hundreds of protesters on Swann Street was based in part on a belief that the protesters had lit a police cruiser on fire. No witness interviewed reported observing a burning cruiser, let alone seeing a protester start the fire. To our knowledge, MPD has not identified the location of the burning cruiser, but social media posts from the evening of June 1 indicate that a police cruiser was in flames at around 9:00 p.m. at 14th and Clifton Streets, a point north of where the police barricades turned back protesters who were subsequently kettled on Swann Street.¹³ These circumstances call into doubt MPD's apparent assessment that the protesters who were kettled were associated with the arson incident, because the witnesses reported that the police did not allow that group of protesters to reach the spot where the cruiser burned. Moreover, it is not clear how MPD's assessment that it was necessary to kettle hundreds of protesters can be squared with the protesters' reports that those marching were orderly, non-violent, and (apart from a handful of protesters who threw water bottles) non-disruptive.

Given this tension in reported facts, we urge the Council to inquire into the factual basis of MPD's threat assessment, and into the steps MPD took to confirm its initial assessment before kettling and arresting hundreds of individuals. These facts are critical not only to assessing MPD's conduct on June 1, but to addressing whether changes of law or procedure are warranted to ensure that any decision to conduct mass arrests rests on a firm factual foundation and sound policing judgment.

¹³ Car Fire at 14th and Clifton St., NW, Popville (June 1, 2020), <https://www.popville.com/2020/06/car-fire-at-14th-and-euclid-st-nw/>.



Photo credit: Joe Flood

3. What precautions should MPD have taken to protect its officers and citizens from COVID-19 when conducting a mass arrest?

Many protesters reported that only a handful of MPD officers were wearing masks the night of June 1. Likewise, many protestors reported that MPD officers removed protesters' masks when processing their arrests and that the officers declined to assist the protesters (whose hands were zip-tied) in re-applying their masks or to loosen the zip-ties so that protesters could reposition the masks themselves. Compounding the lack of adequate masks, the vans and buses that MPD used to transport protestors from Swann Street across the District to the Police Academy did not allow for social distancing. And once the protesters arrived at the Police Academy, many were detained in crowded rooms where social distancing was impossible.

Given the enormously serious risks that COVID-19 posed to the public health and that it continues to pose now, it is imperative that when MPD conducts arrests, it does so in a manner that limits the risk of exposure to COVID-19. The Council therefore should examine any existing MPD guidelines for mass arrests, and, as appropriate, should consider requiring MPD to adopt new best practices.

4. When MPD conducts a mass arrest, what protocols are in place to ensure fair treatment of arrested individuals?

Zip-ties or similar disposable restraints are regularly used during mass arrests. The First Amendment Assemblies Act and other regulations govern their use. *See, e.g.*, D.C. Code § 5-331.11(b). But what protocols are in place to ensure that restraints are not abused to the point where individuals' wrists are bruised and cut? What training is provided to ensure proper application and responses when they have been applied too tightly?

Likewise, what procedures has MPD adopted to ensure that arrestees are provided necessary restroom and sanitation facilities and basic necessities like shelter, food, and water? MPD and the District government more broadly have a responsibility to provide basic provisions to individuals in their care. It is predictable that MPD will find itself in mass-arrest situations involving peaceful protests in the future. From the accounts of the protesters, MPD efforts to meet these responsibilities varied wildly amongst the protesters in their custody. Some protesters were held for many hours while zip-tied and without access to a bathroom or water. What steps are going to be taken to ensure that if MPD undertakes mass arrests in the future, all detainees will be provided basic necessities?

Conclusion

On June 1, 2020, peaceful protesters took to the streets of the District to protest police overreach and abuse against Black people, but wound up encountering escalatory tactics that seemed clearly excessive in relation to the peaceful protest activity they were engaged in and the minor legal infraction with which they were charged. The authors of this report believe there is work for the Council to do to ensure MPD has appropriate legal and policy guidance and always responds with appropriate restraint to peaceful assemblies, and we urge the Council to take up that task with urgency as it continues to oversee MPD's work.