

THE UNIVERSITY'S RESPONSE TO AUGUST 11, 2017: OBSERVATIONS AND IMPROVEMENTS

On August 11, 2017, white supremacists wielding torches marched across the University's Grounds in an attempt to instill fear and provoke violence in our community. When outright physical violence erupted, the University Police Department (UPD) acted to quell it. That said, many have asked why University leadership did not respond to the situation earlier and more aggressively.

The President has asked the Deans Working Group to look critically at the events of August 11 in order to suggest specific improvements to University policies. Our goal is to pinpoint how the University's response could have been more effective and identify changes to policies and practices that will better safeguard the University community from harm while upholding the University's commitment to constitutionally protected free speech. The specific observations that follow therefore do not constitute an overall assessment of the efficacy of the University's response to the events of August 11. A more global assessment of the University's safety and security protocols and apparatus is the purview of Margolis Healy, the expert, external consultant that the University has hired. As a consequence of the narrow scope of our review, this document is limited in its conclusions and fundamentally critical in nature.

The events of August 11 and 12 resonated so profoundly across the nation and around the world because they represented not only discrete incidents of violence but also stark evidence of a larger paradigm shift. University officials' frame of mind was shaped by a decades-long history of non-violent protests on Grounds that led them to approach the march with the assumption that it was constitutionally protected and should be accommodated with minimal police intrusion. On a number of levels—intelligence evaluation, policy backdrop, and police response—this mindset led the University to make judgments that were misaligned to the context and left UPD insufficiently equipped to respond. As a result, UPD understood its role as being available to monitor for potential violent disorder by anyone present, amassing backup in the event of such disorder, and intervening only in response to such disorder.

It is important to note that these conclusions are focused on improving the University's ability to respond in the future. As a result, they do not identify what the University did right in preparing for and responding to August 11. This includes daily pre-planning meetings in the week prior to August 11, increasing on-duty manpower on Friday night so that UPD had twice the number of officers on duty than they ordinarily would, and drawing upon the strong collaborative relationships between UPD and its regional and state law enforcement partners to request significant additional resources from Charlottesville City, Albemarle County, and the Virginia State Police to be mobilized and staged near Grounds before the Friday night march. Ultimately, more than 40 law enforcement officers were on scene to restore order.

Going forward, the University of Virginia and higher education institutions across the nation must be prepared to respond to situations in which violence and intimidation accompany demonstrations and protests. It is incumbent upon the University to forge new policies and practices that will prevent it from again becoming a locus of intimidation and violence while recommitting to the principles of free speech at the core of its mission.

The Deans Working Group concludes that the University's response to August 11 could have been improved in three important areas:

- I. The intelligence sought, received, and acted upon by the University administration;
- II. The policies the University had in place to govern protests and demonstrations; and

III. Application of existing protocols for responding to a demonstration that did not conform to past pattern, i.e., a protest by large numbers of people carrying torches and acting in an intimidating and violent manner towards members of the University and Charlottesville community on Grounds.

I. Incomplete Intelligence

The University relied on official intelligence from the Virginia Fusion Center and did not seek alternative sources of information as thoroughly as it could have.

- Historically, the University has collaborated closely with the Commonwealth of Virginia in preparation for major incidents. It is standard practice to rely on the intelligence-gathering resources of the Virginia Fusion Center, “a collaborative effort of state and federal agencies working in conjunction with local partners to share resources, expertise, and/or information to better identify, detect, prevent, and respond to terrorist and criminal activity utilizing an all crimes/all hazards approach.”¹ During the week leading up to the announced August 12 rally in downtown Charlottesville, the University received intelligence that indicated plans for a potential additional rally on Friday, August 11 in Darden Towe Park in Albemarle County. The University relied on that intelligence at least until 3:23pm on August 11, when it received countervailing information. In hindsight, the University could have been more proactive in seeking out information about potential alternate activities planned for August 11 prior to the main rally on August 12.

The University did not effectively verify and integrate the information it did receive from alternative sources.

- At 3:23 pm on August 11, UPD officials received intelligence related to a possible demonstration on Grounds that night by white nationalist and neo-Nazi groups. Those groups already had received a permit from the City of Charlottesville, subsequently backed by a federal court order, to hold a demonstration downtown in Emancipation Park on Saturday, August 12. The intelligence about a potential August 11 demonstration was partial, stating that a march would “start at a Jefferson statue (not sure which one)” and proceed off-Grounds to St. Paul’s Church. Though UPD attempted to verify and gather additional information from the original sources of that intelligence, the University should have been more attentive to other sources of information about the possibility of an on-Grounds demonstration on August 11.

The information that the University acquired about the August 11 march was not accurate. University officials should have been more attentive to that possibility.

- After receiving information at 3:23 pm on August 11, UPD acted proactively to contact one of the organizers of the August 12 demonstrations in an effort to obtain further information from that source, placing five investigatory calls to organizers between 7:43pm and 9:52pm. Through these calls, UPD learned that the marchers planned to converge on Nameless Field and process along University Avenue directly to the north terrace of the Rotunda, where they would gather for 15 minutes. In the final call between UPD and demonstration organizers, UPD instructed the marchers to ground their drones, questioned the apparent change in the march route, and expressed concern that the changed route would mean that torches would be near buildings and trees on Grounds. The marchers ended the call abruptly and proceeded with their march. UPD over-relied on the information the organizers provided, which turned out to be deliberately misleading and ultimately inaccurate.

¹ <http://www.vsp.state.va.us/FusionCenter/>

II. Insufficient Policy Protections

The University has neither a formal permitting process nor time, place, and manner policies for use of common spaces on Grounds.

- The University has not heretofore required individuals or groups to obtain permits for protest or demonstration activities on the Grounds, and it lacks comprehensive policies governing time, place, and manner regulations for demonstrations in common spaces outside of specific circumstances (e.g., Final Exercises or use of amplified sound). Accordingly, the University did not officially approve or sanction the August 11 march on the Lawn. The absence of such policies and procedures left the University vulnerable to an unannounced, nighttime march of approximately 300 white supremacists intent upon intimidation. Constitutionally allowable time, place, and manner policies could have better ensured the safety of the University community by equipping UPD with the authority to respond to any policy violations.

The University's "Open Burn and Open Flame" policy did not explicitly authorize UPD enforcement.

- The University's "Open Burn and Open Flame Operations at the University of Virginia" policy, prohibits open flame devices (which includes but is not limited to candles and tiki torches) on University property and facilities unless that use has been approved by the Office of Environmental Health and Safety (EHS) or the University of Virginia Medical Center Fire Protection Inspector's Office, as appropriate, and is conducted in accordance with the Virginia State, County and City codes and regulations. Though EHS had not approved open flame devices related to the August 11 march, at the time, University policy did not require EHS to notify UPD of approvals. Because of the lack of notification procedures, UPD was not sufficiently aware of its authority to enforce this policy.

III. Inadequate Application of Existing Protocols and Enforcement of Relevant Law

The application of the University's protest/demonstration protocols was mismatched to the situation.

- The University's response to the information available proceeded according to the standard protocols for non-violent demonstrations on University common spaces. Based on a decades-long history of non-violent protests on Grounds, those protocols assumed that such demonstrations are constitutionally protected and should be accommodated with minimal police intrusion. Those protocols were insufficient to address the issues raised by the nighttime presence of a large, highly organized, torch-bearing group intent on intimidation.
- The University has invested significant time and resources in developing emergency response protocols for a range of incident types, including for potentially violent clashes between large groups of protesters and counter-protesters, but had not anticipated an incident of this nature prior to August 11, 2017.
- The University decided not to issue an emergency notification to the University community on August 11 given concern that an alert might compromise efforts to contain the situation by drawing additional people to the area. Some in the University, particularly individuals on the Lawn that evening, have criticized the decision to exercise that judgment on August 11. In making that decision, the University should have weighed the fact that the Lawn is both the symbolic center of the University of Virginia and home to students, faculty, and staff.

The University Police Department was not aware that it might have authority to enforce section 18.2-423.01 of the Virginia Code, “Burning object on property of another or a highway or other public place with intent to intimidate.”

- On August 11, the University did not attempt to enforce section 18.2-423.01 of the Virginia Code, which states “any person who, with the intent of intimidating any person or group of persons, burns an object on a highway or other public place in a manner having a direct tendency to place another person in reasonable fear or apprehension of death or bodily injury is guilty of a Class 6 felony.”² Given the lack of any recent incidents of intimidation by fire on the University’s Grounds and the infrequent enforcement of this law anywhere in Virginia since its enactment in 2002, UPD did not readily recognize its potential applicability in this situation.

University Police Department Officers may not have shifted response protocols quickly enough when faced with changing circumstances.

- As noted, UPD treated the August 11 demonstration according to a protocol designed for non-violent protests and demonstrations. To the UPD officers monitoring the situation, the aggressive chanting and yelling that occurred prior to the event turning physically violent was constitutionally protected. Though the marchers were not visibly armed—as they would be in Emancipation Park on August 12—they numerically overwhelmed the counter-protestors and physically surrounded them. With the outbreak of outright physical violence, the police identified disorder, declared an illegal assembly, shut down the demonstration, and swept the area. An earlier show of force or a police cordon between the demonstrators and counter-demonstrators might have mitigated this confrontation.

FUTURE STEPS

Given these areas of improvement, the University is taking the following steps for the future:

I. Key Policy Actions

1) Classify the Academical Village as a facility and explore similar classification for other spaces across Grounds.

The University’s “Regulation of Weapons, Fireworks, and Explosives” policy prohibits members of the general public and visitors to Grounds from possessing, storing, or using any weapon in any University facility or while attending sporting, entertainment, or educational activities. Designating the Academical Village as a facility, consistent with its multi-purpose use as a residential, academic, and administrative space, would extend the same regulations to the Lawn. Members of the University community are already prohibited from possessing, storing, or using any weapon on University property.

2) Strengthen the University’s “Open Burn and Open Flame” policy and intensify its enforcement.

The University’s “Open Burn and Open Flame” policy could have been invoked in response to the events of August 11, but it was neither widely known nor consistently enforced. The University is now strengthening the policy by ensuring open flame approvals are communicated by the Office of Environmental Health and Safety to UPD and by adding a provision that expressly designates UPD as being “lawfully in charge of University property for purposes of forbidding entry upon or within, or prohibiting remaining upon or within University property while possessing [flames],” which empowers UPD officers to charge those in violation of the policy with trespassing.

² <https://law.lis.virginia.gov/vacode/title18.2/chapter9/section18.2-423.01/>

The Board of Visitors should enact this policy as a regulation. The only other policy with this designation is the University's "Regulation of Weapons, Fireworks, and Explosives" policy.

3) Consider whether the University should adopt time, place, and manner regulations to govern First Amendment activities on University common spaces consistent with the University's commitment to a pluralistic, open community.

As noted, the University historically has not required permits or enforced other regulations regarding protests and demonstrations on the Lawn or in other common spaces outside of specific circumstances (e.g., Final Exercises). While the events of August 11 underscore the necessity and urgency of safeguarding the University community, the University remains committed to the values of open dialogue and to the protections of the First Amendment. In light of the August 11 events, the University is considering whether it should adopt constitutionally permissible time, place, and manner regulations, and related approval processes, that would simultaneously facilitate free speech and protect the University community from harm. Any such policy would be made in consultation with the University community and would need to ensure the continued ability of students, faculty, and staff to engage in robust expression on Grounds.

II. Other Improvements to the University's Incident Response Framework

- The University will strengthen its partnership with the Virginia Fusion Center in responding to critical incidents. Going forward, the University also will develop or acquire proactive tools to seek and incorporate information from alternative sources.
- The University is reviewing the application of its emergency notification protocols and planning additional education of the community about the application of those protocols. In particular, it will consider how best to apply its protocols with the needs of those constituencies most directly affected by activities on common spaces, and especially the Lawn, in mind. The University will also consider additional means of alerting the community about incidents or events.
- UPD will be informed of approved uses of open flame devices and will take appropriate action against any use that does not have such approval.
- UPD will enforce section 18.2-423.01 of the Virginia Code when appropriate, as well as seek criminal prosecution of intimidation and threats under all applicable sections of the Virginia Code.
- UPD will provide additional training of its officers to better equip them to recognize the threshold between speech and violent intimidation and empower them make judgment calls in response to rapidly evolving situations.
- The University's external safety and security expert, Margolis Healy, is conducting a comprehensive review of our safety and security infrastructure, policies, and tools.
- The University will conduct a pan-University climate survey that will include examination of the broader relationship between law enforcement and members of the University community.