

Brief Rebuttal of the Cooley “Independent Post-Action Review. April 2024 Indiana University Encampment Protests. Report and Recommendations.” July 24, 2024

This report was publicly released July 25, 2024—one day prior to our scheduled Press Conference July 26, 2024. Thus, only a brief, cursory response can be offered at this time. It is, nevertheless, important to provide an initial rebuttal because the first recommendation of the report states “IU should approve a new expressive activity policy addressing disruptive activities before the start of the Fall 2024 semester.” In the transmittal email for the proposed policy received June 21, 2024, the General Counsel suggested that the proposed policy was needed for two reasons. First, “Indiana law made clear that free speech and assembly rights could not be limited to a single designated area, and, in any event, the growth of Indiana University to encompass multiple campuses increasingly made the designation of a single ‘assembly ground’ impractical.” This law cited can effectively *increase* the space, time, and manner designation of free speech on campuses (rather than restrict it). Secondly, the events of April 2024 are cited as demanding a more updated policy. The April 2024 events are precisely the subject of the Cooley “independent” investigation.

The expressed purpose of taking down a Pro-Palestinian encampment cannot stand as viewpoint neutral in this instance—those who hold that viewpoint were not even represented in the report. This is a serious investigative flaw—the report did not expressly include the voices of the 55 people arrested on Dunn Meadow or the hours of video recording and photo documentation obtained by those active in the protest. It was unsubstantially argued that on the very first day in less than 5 hours the encampment posed such a severe threat to the campus that weapons of war were necessary—AK47s and sniper rifles. The report suggested that such radical use of weapons was warranted, but the grounds and consequences of that decision were not established through multiple viewpoints and was instead justified by those involved in the decision-making process itself. The stories and consequences for those arrested deserve to be included in the “independent” report. By leaving out those most intimately involved in the protest itself, misinformation and factual inaccuracies were smuggled in. Viewpoint neutrality is at this juncture unattained through either the investigation or the report. Monroe County’s DA even referred to the arrests as “constitutionally dubious.”

As with the proposed new policy, expressive activity is treated as itself a threat to be managed, rather than as highly valued educational and social engagements. That the report basically spells out the punishment orientation of the new policy itself is evidence that the investigation and its follow-on report is so tightly linked with the proposed Board policy (though that policy draft was made available June 21 and the report has a date of July 24), independence appears highly suspicious. The evidence and facts were collected primarily from/by those who hired the independent team. Reasonable alternative interpretations of the evidence and counter evidence were seemingly not considered. How was this legal firm selected for the independent investigation anyway?

The Bridging Divides Brief (issued May 2024) (included in this press packet), claimed that the presence of lethal weapons against encampment protestors happened on only 4 campuses and it happened twice at ours. At 14 institutions, administrators engaged in dialogue with protestors and brought about significant changes to both the encampment structure of the protest and to the campuses themselves as part of the ongoing commitment to dialogue. Wouldn’t we rather IU be

listed amongst those 14? A full 95% of encampment protester events were conducted with “no reports of encampment protesters engaging in physical violence or destructive activity.” The only reported violence from an IU protestor was an alleged hand bite in the process of being dragged down to the ground by Indiana State Police. Certainly, on the two days of arrests on which the investigation was to focus, physical violence or the threat of physical violence was not a condition or threat calling for lethal weapons on campus. The report does little to convince us that the administration made well-informed, moral decisions. Changes in policy will not provide this administration with the capacity to make decisions that better respect the expressive activity of peaceful protestors in our Indiana University community and, in fact, seem to give license to escalated violence regardless of the level of peace through which protesters share their voices.

Both the report and the proposed policy characterize the Pro-Palestinian encampment and others like it as “disruptive” without understanding the educational and social merits of political activism and voice (see Recommendation 6). As an Institution of Higher Education, the educative nature of expressing commitment and passion for a global crisis should be our central orientation. Given the preponderance of evidence that our encampment, like most, has been peaceful, concerns for safety are not misplaced and should not drive administrators to abandon commitments to learning. U.S. university protests have a long history of both peaceful disruption and social educational force and outcomes. That the April 2024 IU campus arrests and police brutality happened during the week of the Kent State massacre sets those events in historical context. I want to write a personal perspective on this point. I spent many afternoons in teach-ins following my April 25 arrest. I read books from the make-shift library. I engaged in significant dialogue with those on blankets and tents. Reading groups are active to this day. There are nightly reflections that I try not to miss. I don’t agree with everything said. We are a diverse group learning from one another and from those around us. This is a strength. This gives us a way to grow. As a member of the University community, I feel proud when I engage with those in Dunn Meadow collectively struggling, learning, stretching and finding their own voice on a crisis the world has yet to resolve. To leave out this perspective on expressive activity and what happened in Dunn Meadow in April 2024 is to misunderstand both the role of universities and the encampment.

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