

1 **Compilation of Commissioner Factual Findings by PRC Staff**
2 **With Commissioner comments**
3 **Draft 8-10-2015**
4

5 The following factual findings are based on a review of materials provided to the
6 PRC from the BPD, review of video tape recordings, photos, contemporaneous
7 statements, and testimony at PRC and City Council meetings regarding the events of
8 December 6. (AB 1.1) (GP 1.1)
9

10
11 1. On December 1, 2014, BPD was made aware of a planned, unpermitted march
12 scheduled to take place on Saturday, December 6, 2014.¹ BPD did not try to contact the
13 organizers until the day of the event and they failed to make contact prior to the event.²
14

15 2. A mass protest march against police violence, excessive militarization was
16 announced as planned for December 6th. The march was intended to be peaceful,
17 nonviolent, although no doubt reflective of the anger and frustration of many all across the
18 country at the loss of black lives and the inability of the "system," including grand juries, to
19 bring a sense of fairness, justice and transparency to what is clearly a nationwide
20 problem. (MS 1.2) Protests were happening consistently for over a week prior to
21 December 6th and happened for nearly a month in varying size afterward as well. (BV 1)
22

23 3. The December 6 demonstration originated as part of the national Black Lives
24 Matter movement. (GP 1. 2) "Black Lives Matter is an ideological and political
25 intervention in a world where Black lives are systematically and intentionally targeted for
26 demise. It is an affirmation of Black folks' contributions to this society, our humanity, and
27 our resilience in the face of deadly oppression."³ The focus of the December 6
28 demonstration was to express frustration and anger over the failure of the authorities to
29 charge the police officers responsible for the deaths of Michael Brown in Ferguson,
30

31
32
33 ¹ Response to Civil Unrest December 6th and 7th 2014; A Review of the Berkeley Police
Department's Actions and Events of December 6 and 7, 2014 (hereinafter "BPD Report"), pages 1,
12.

34 ² BPD Report, page 13.

³ <http://blacklivesmatter.com/a-herstory-of-the-blacklivesmatter-movement/>

1 Missouri and Eric Garner in Staten Island, NY. (AB 1.2) (Note GP 1.2 language
2 substantially similar)(BV 1.1 substantially similar)

3
4 4. The Black Lives Matter movement has been a powerful catalyst in the social
5 justice community since its genesis in 2012 as a response to the way in which our society
6 responded to the death of Trayvon Martin. Its focus is on the specific ways in which Black
7 lives are denigrated and subjected to violence in our society.⁴

8
9 5. BPD's official stance toward the protest was one of "protecting and defending
10 peaceful First Amendment activity."⁵ According to its Mission Statement, BPD planned to
11 "make every attempt to quickly identify and/or arrest only those specifically involved in
12 criminal activity or violence."⁶ (GL 10.63)(GP 1.5) (AB 2.5) However, BPD's preparation
13 for the event focused on the possibility of violence toward the police from members of the
14 demonstration, and preserving public safety.⁷(AB 2.5) (GP 1.5) (MS 1.2) The department
15 understood the protest as one organized as a "F___ the Police" march, citing a leaflet with
16 a picture of a protester sitting atop an overturned/vandalized police vehicle.⁸ (GL 10.65)
17 These leaflets were reflective of fringe groups or individuals, small in number and not
18 associated with the majority of the protesters. ~~BPD's focus on this small group created~~
19 ~~the belief that all or most of the demonstrators identified with these two leaflets; in effect,~~
20 ~~demonizing the demonstrators from the outset~~ unreasonably focused on this small group
21 as reflecting the beliefs and attitudes of the demonstrators as a whole, which was
22 erroneous. (MS-1.2)

23
24 ⁴ "When we say Black Lives Matter, we are talking about the ways in which Black people are
25 deprived of our basic human rights and dignity. It is an acknowledgement that Black poverty and
26 genocide is state violence. It is an acknowledgment that 1 million Black people are locked in cages
27 in this country—one half of all people in prisons or jails—is an act of state violence. It is an
28 acknowledgment that Black women continue to bear the burden of a relentless assault on our
29 children and our families and that assault is an act of state violence. Black queer and trans folks
30 bearing a unique burden in a hetero-patriarchal society that disposes of us like garbage and
31 simultaneously fetishizes us and profits off of us is state violence; the fact that 500,000 Black
32 people in the US are undocumented immigrants and relegated to the shadows is state violence;
33 .the fact that Black girls are used as negotiating chips during times of conflict and war is state
34 violence; Black folks living with disabilities and different abilities bear the burden of state-sponsored
Darwinian experiments that attempt to squeeze us into boxes of normality defined by White
supremacy is state violence. And the fact is that the lives of Black people—not ALL people—exist
within these conditions is consequence of state violence." <http://blacklivesmatter.com/a-herstory-of-the-clacklivesmatter-movement> (AB 1.3)

⁵ BPD Report, page 15 (Mission Statement)

⁶ BPD Incident Action Plan for 12/6/2014, created before the street actions began, pages 1 & 7

⁷ BPD Report, page 13

⁸ BPD Report, page 13

1
2 6. The BPD's Incident Action/Briefing Notes directed the police to: "Get'um running!
3 Stretch the crowd out so they are not a mass, but individuals."⁹ (AB 2.5) (GP1.5)
4

5 7. In anticipation of a possibly large and violent crowd (as seen in other
6 demonstrations across the U.S.) BPD requested assistance from the Alameda County
7 Office of Emergency Services under the Mutual Aid response policy.¹⁰ (AB 2.6)(GP 1.6)
8 Under the current BPD policy, mutual aid responders follow their own department's
9 internal rules and protocol.¹¹ (AB 2.6)(GP 1.7) Mutual aid responders were from a variety
10 of jurisdictions. (AB 2.6)(GP 1.7) Chief Meehan told the PRC that the following law
11 enforcement agencies were among those participating in the December 6 response:
12 Alameda County Sheriff's Office, Alameda Police Department, Hayward Police
13 Department, Pleasanton Police Department, Livermore Police Department, Oakland
14 Police Department, California Highway Patrol, and UC Berkeley Police Department.¹² (GL
15 2.8)
16

17 8. The mutual aid responders brought non-lethal munitions, including bean bag
18 shotguns, as well as at least one tactical response vehicle.¹³ (AB 2.6) (GP 1.7) Numerous
19 eyewitnesses testified to the PRC about seeing an armored vehicle marked "Hayward
20 Police Department" in or near the Civic Center area.¹⁴ (GL 2.9) BPD did not provide any
21 specific orders limiting the usage of non-lethal force in response to the demonstration, or
22 as part of a dispersal order. (AB 2.6) (GP 2.8) BPD did not inventory the non-lethal
23 munitions brought by other jurisdictions either before or after the demonstration.¹⁵(AB 2.6)
24 (GP 2.8)
25

26 9. The December 6 demonstration began at 5:00 p.m. with a crowd gathering on the
27 UC Berkeley Campus.¹⁶ (AB 2.4) (GP 1.3) As the crowd marched down Telegraph and
28

29
30 ⁹ BPD Incident Action Plan for 12/6/2014, created before the street actions began.

¹⁰ BPD Report, page 16, paragraph 3

¹¹ BPD Report, page 16, paragraph 3

¹² Chief Meehan later confirmed with the PRC Officer that this list is accurate and complete.

¹³ Hayward Police Department Special Response Unit, After Action Report – SRU Operation #
31 14-14, page 7.

¹⁴ Alejandro S, City Council Meeting, December 16, 2015

¹⁵ BPD Report, pages 52-53

¹⁶ Moni Law, PRC Meeting, June 10, 2015; CAD report, page 2.

1 into central Berkeley it grew in size.¹⁷(AB 2.4) (GP 1.3) As the crowd approached the
2 Berkeley Police Department it had grown to several hundred.¹⁸ (AB 2.4) (GP 1.3) The
3 crowd gathered and made their way to the Berkeley Police Department around 6 p.m. (BV
4 2) The crowd was peaceful, walking through the streets and chanting.¹⁹ (AB 2.4) (GP
5 1.4)

6
7 10. Shortly after the crowd arrived at the Berkeley Police Department, a command was
8 given to set up a skirmish line across MLK at Addison. (AB 3.9)(GP 2.11) More than 100
9 police officers formed barricades at the police department.(BV 1.2) This action was taken
10 to move the crowd away from the Public Safety Building entrance and the staging area.²⁰
11 (GP 2.11) When a skirmish line is set up, officers are directed to maintain a safety zone,
12 approximately one arm's length, around themselves.

13
14 11. It must be noted that before the larger gathering arrived at the Public Safety
15 Building, several isolated members of the demonstration could be seen testing the
16 skirmish line and hurling insults to the police officers.²¹ At this time and as the crowd
17 approached no member of the Police department acted aggressively or
18 confrontational.(GP 1.3) At several instances of marchers getting close to the skirmish
19 line, you could hear some members of the demonstration admonishing any of the ones
20 confrontational in nature with acclamation of "we are peaceful and non violent."²² (GP 1.4)

21
22 12. In establishing the skirmish line, ~~BPD-police~~ officers began to push protesters
23 away, in keeping with the BPD "safety zone" policy. This was the first use of force on
24 December 6.²³(AB 3.9) Numerous demonstrators reported being hit with batons at MLK
25 and Addison. Some reported being struck in the head and/or back. At the time the
26 skirmish line was set up, the crowd had not engaged in any violent conduct.²⁴ However,
27

28 ¹⁷ Berkeley Police Department Detail Call For Service Report (hereinafter "CAD Report"),
29 pages 3-4 [staff note: need some language about how times in CAD report are not necessarily
precise.]

30 ¹⁸ M. Gordon, PRC Meeting, February 11, 1015; CAD Report, page 4 (900 people)

31 ¹⁹ James Arcellano, PRC Meeting, December 10, 2014; John, PRC Meeting, December 10,
32 2014; Anonymous Woman, PRC Meeting, December 10, 2014; Paul Kealoha Blake, City Council
Meeting, December 16, 2014; CAD Report, pages 3-4

32 ²⁰ BPD Report, pages 16 – 17.

33 ²¹ CAD Report, page 6 (4 BLK males Addison/MLK getting ready to throw rocks @ the PSB)

33 ²² BPD videos

34 ²³ BPD Report, page 20

²⁴ CAD Report, page 4-6

1 members of BPD did report observing conduct which they believed indicated the likelihood
2 of vandalism.²⁵ (AB 3.10) After the skirmish line was set up and individual protesters were
3 pushed and struck by members of BPD [police?], the crowd became more verbally
4 confrontational with BPD [police?].²⁶ (AB 3.11)

5
6 13. A small ~~few~~ group of vandals continually engaged in acts of vandalism, including
7 tagging buildings with spray paint, breaking windows, and overturning trash cans.
8 Peaceful demonstrators were putting themselves between these agitators and properties
9 trying to stop the acts of vandalism from happening. (BV 1.2)

10
11 14. At about 6:30 p.m., a decision was made to allow protesters to continue to move
12 North across MLK.²⁷ (AB 3.12)(GP 2.12) ~~BPD?~~-officers remained in front of the police
13 department, in a line protecting the safety of the building. (AB 3.12)(GP 2.12) The crowd
14 began to move north towards University Avenue.²⁸ (AB 3.12) (GP 2.12) There was no
15 communication from BPD to the crowd regarding either the establishment or the
16 disbanding of the skirmish line.²⁹ (AB 3.13)

17
18 15. As the crowd moved north, a protester approached a BPD officer with his arms
19 raised. The protester was an older gentleman with white hair and a beard. The protester
20 came very close to the officer, well within an arm's length. The officer used his baton to
21 push the protester away. The protester fell backward, tripping over his dog, and fell to the
22 ground.³⁰ (AB 3.14)(GP 2.13) No discernible warnings could be heard on that video to
23 stay away from the safety zone.(GP 2.13)³¹ Many other protesters saw this and became
24 more verbally confrontational with the police. One member of the crowd threw a piece of
25 cloth toward the police. (AB 3.14)(GP 2.13) Shortly after this a number of projectiles were
26 thrown toward the police from the north moving crowd and the atmosphere became more
27 confrontational.³² (AB 4.15) (GP 2.14) Some protesters attempted to dissuade anyone
28

29 ²⁵ CAD Report, page 4

30 ²⁶ Moni Law, PRC Meeting, December 10, 2014

31 ²⁷ CAD Report, page 6

32 ²⁸ BPD Report, page 20; CAD report, page 6

33 ²⁹ Moni Law, PRC Meeting, June 10, 2015

34 ³⁰ James Arcellano, PRC Meeting, December 10, 2014; Tonya Carpenter, City Council Meeting, December 16, 2014; BPD Report, page 21

³¹ ~~Staff notes: Statement appears to contradict some videos.~~

³² M. Gordon, PRC Special Meeting, February 25, 2015; BPD report, page 21, paragraph 3; CAD report, pages 6-7

1 from acts of violence, encouraging the crowd to stay focused on the issue and to continue
2 to march north. (AB 4.15) (GP 2.14) Some of these protesters placed themselves
3 between the police skirmish line and the protesters. (AB 4.15) At least one of those who
4 were attempting to keep the crowd peaceful reported being struck in the back with a
5 baton. BPD did not communicate with those members of the protest who assumed
6 leadership roles calling for peaceful conduct or in any way take advantage of the de facto
7 peaceful leadership which emerged in the crowd.³³ (AB 4.15)(GP 2.14) Several protestors
8 reported flash grenades being thrown at their feet by officers. (GL 8-4-15)
9

10 16. More projectiles were thrown at the police, including a screw driver, bricks, rocks,
11 metal pipes and a bag of gravel.³⁴ At least five officers were injured, one with a dislocated
12 shoulder.³⁵ As the projectiles were being thrown near MLK Jr. Way and Addison Street,
13 BPD [police?] responded by firing one foam baton round³⁶ and rolling four smoke
14 canisters into the crowd.³⁷ (AB 4.16)(GL 1.2) A protester picked up one of the smoke
15 canisters and threw it back toward the police.³⁸ (AB 4.17) The crowd eventually dispersed
16 from the front of the police station and continued to move north toward University.³⁹ (AB
17 4.18) (GP 2.16) The police remained in front of the police station.⁴⁰ (AB 4.18)
18

19 17. At MLK and University the crowd began to move west on University.⁴¹ (AB
20 4.19)(GP 2.17) Some violent individuals wearing black and mask covered faces were
21 seen vandalizing the Trader Joe's.⁴² (AB 4.19)(GP 2.17) Police did not respond to the
22 vandalism.⁴³ (AB 4.19) (GP 2.17) There is evidence in BPD video that the department
23 was aware of those individuals who were throwing projectiles and those breaking windows
24

25 ³³ Moni Law, PRC Meeting, December 10, 2014; Anonymous Woman, PRC Meeting,
December 10, 2014; Moni Law, PRC Meeting, June 10, 2015

26 ³⁴ BPD Report, page 21, paragraph 3; CAD Report, pages 6-7

27 ³⁵ BPD Report, page 21, paragraph 3

28 ³⁶ A foam baton is a 40 mm foam cylinder which is designed to be used in short range. Each
round fired from the foam baton is filled with small discs. The round can either be skipped off the
ground, in which instance it separates from the round and hits multiple targets in the leg or a single
round can be fired at a single individual, in which instance it will separate on impact.

29 ³⁷ Steven O, City Council Meeting, December 16, 2014; BPD Report, page 21, paragraph 4;
30 CAD Report, page 7

31 ³⁸ Male Speaker, City Council Meeting, December 16, 2014; BPD Report, page 30 (picture);
32 CAD Report, page 7

33 ³⁹ BPD Report, page 22, paragraph 3

34 ⁴⁰ BPD Report, page 22, paragraph 3

⁴¹ CAD Report, pages 6-7

⁴² BPD Report, page .22, paragraph 3; CAD Report, page 7

⁴³ M. Gordon, PRC Special Meeting, February 24, 2015

1 at Trader Joe's, but did not apprehend them.(GL 10.64) At other times during throughout
2 the evening when vandalism was conducted, police officers appeared to be out of sight,
3 leaving it to non-violent protestors to attempt to stop the looting. (GL 10.64)⁴⁴ Some of the
4 protesters attempted to stop the vandalism and looting. (AB 4.19) (GP 2.17) This attempt
5 at citizen policing was a task for which the protesters were not prepared, and it left them
6 open to violent retaliation from the vandals. ⁴⁵ (GL 10.64) Some of those engaged in
7 vandalism and looting attacked the protesters who were trying to stop them as well as
8 bystanders.⁴⁶ (AB 4.19) (GP 2.17) Police officers did not respond to protect the
9 peacekeepers.(GL 10.64) The majority of the protesters continued walking west on
10 University.⁴⁷ (AB 4.19) (GP 2.17)

11
12 18. As the crowd continued moving west on University there were some continued
13 acts of vandalism and looting.⁴⁸ (AB 4.20) (GP 2.17) Other members of the protest
14 repeatedly tried to stop this conduct and were met with violence and intimidation.⁴⁹ There
15 were no police present.⁵⁰ (AB 4.20)

16
17 19. The police did not reengage the crowd until near to the entrance to Interstate 80.
18 A law enforcement presence at the University on ramp was able to keep the protesters off
19 of the freeway.⁵¹ (AB 5.21)

20
21 20. At 8:20 p.m. a dispersal order was given at Berkeley Way and West Street.⁵² (AB
22 5.21)(GP 3.18) Lt. Schofield repeatedly announced dispersal orders along with the
23 critical evaluation of the demonstration as an unlawful assembly.^{53 54} (GP 3.18) The CAD
24 reports stipulate periods when the protests in West Berkeley were peaceful and when the
25 police were assaulted and hit with rocks and/or bottles.⁵⁵ (AB 5.21) (GP 3.18) The police
26 gave a number of dispersal orders in West Berkeley, and also attempted to kettle the
27

28 ⁴⁴ Staff Note: This sentence and the prior sentence appear to conflict.

29 ⁴⁵ BPD Report, page 22, paragraph 3

30 ⁴⁶ BPD Report, page 23, paragraph 1

31 ⁴⁷ BPD Report, page 23, paragraph 2; CAD Report, pages 7-8

32 ⁴⁸ CAD Report, pages 7-8

33 ⁴⁹ Carol Denney, PRC Meeting, June 10, 2015.

34 ⁵⁰ BPD Report, page 23, paragraph 2

⁵¹ BPD Report, pages 23-24

⁵² CAD Report 8:20 p.m. dispersal order; BPD Report, page 24, paragraph 4

⁵³ BPD videos

⁵⁴ Staff Note: Schofield giving dispersal orders at Berkeley Way & West Street??

⁵⁵ BPD Report, page 24, paragraph 4

1 protests a number of times.⁵⁶ (AB 5.21)(GP 3.18) These attempts at kettling were not
2 very successful. (GP 3.18)

3
4 21. The protest then began to move eastbound, back toward the University. As the
5 demonstrators regrouped near the University there were some reports of vandalism and a
6 report of a fire.⁵⁷ (AB 5.22)(GP 3.19). As the crowd moved east through Berkeley, there
7 were periodic reports of sponge rounds and beanbag rounds being fired at the crowd.
8 These periodic reports continued through much of the night, with people reported injuries
9 from beanbag or sponge rounds periodically throughout the demonstration. It is unclear
10 what agencies deployed these less-than-lethals, or what directives, if any, were given by
11 BPD regarding the use of less-than-lethals.

12
13 22. Marchers reported being forced or trapped by BPD [police] into a parking lot near
14 Acton and University, then being shot with rubber bullets and CS gas, possibly by officers
15 from another department, as they were trying to escape. (GL 8-4-2015) Between 8 p.m.
16 and 9 p.m. many protesters returned to the campus area. (BV)

17
18 23. At 9 p.m., police command decided to issue dispersal orders to the crowd, now
19 located on Bancroft between Dana Street and Telegraph Avenue. The justification given
20 in the police report is that "Command had an increasing concern that there would be more
21 looting, vandalism and violent riotous behavior in the Telegraph Ave. business district if
22 the crowd was allowed access and ordered the officers to attempt to kettle the crowd in
23 order to issue an effective dispersal order."⁵⁸ (GL3.16)

24
25 24. Between 8 p.m. and 9:25 p.m., neither the CAD listing nor the police report has
26 mention of any protester violence in the area near the University campus. (GL 4.20)

27
28 25. There are two CAD references to rock-throwing at 9:26 p.m. and 9:46 p.m., and
29 the police report describes the "rocks and bottles thrown from the back of the crowd at
30 officers." Numerous dispersal orders were delivered. (GL 4.20)

31
32 ⁵⁶ CAD Report 8:20 p.m. dispersal order & order to kettle; BPD report, pages 50-51

33 ⁵⁷ CAD Report @ 9:26 p.m. and 9:46 p.m. describes rocks and bottles thrown from the back of
34 the crowd toward officers.

⁵⁸ BPD Report, page 25 paragraph 3; At 9:15 a Chronicle reporter tweeted that "police are
surrounding protestors on all sides at Bancroft Avenue at Telegraph . . . crowd sandwiched in." GL
provide citation to tweet???

1
2 26. As of 9:30 p.m., more than 100 officers from Berkeley and other Police
3 departments blocked the intersection of Bancroft Way and Telegraph Avenue.⁵⁹ The
4 crowd of protesters had swelled to about 200 and included many UC Berkeley students.
5 (BV 1.3)

6
7 27. Police proceeded to push protesters back on Telegraph and Durant Avenue, to
8 which protesters chanted, "Hey hey, ho ho, police state has got to go." Police later surged
9 at the crowd and began putting on gas masks. During this time, police began using
10 batons to push protesters down Telegraph. Numerous protesters reported being hit with
11 batons, many in the face and head. Many of the baton strikes were delivered using over
12 the head or over the shoulder swings. Some claimed they were hit even though they were
13 peaceful.⁶⁰ (BV 1.4) There were also numerous reports of law enforcement striking at
14 cameras or cell phones that were being used to record the events.

15
16 28. While officers were attempting to disperse the crowds at Telegraph Avenue and
17 Bancroft Way, a much larger crowd, estimated between 1000 and 1500 strong had begun
18 to form at Telegraph Avenue and Durant Avenue.⁶¹ At 10 p.m., with the Chief's approval,
19 the police begin deploying gas around Telegraph and Durant.⁶² Subsequent to this
20 deployment, reports of rock and bottle throwing and vandalism of police cars increased.⁶³
21 (GL 4.20)

22
23 29. Around 10:30 p.m. police deployed CS gas to the crowds, without any warning,
24 the dispersal orders that were given referred to the possible use of less-lethal munitions
25 but did not include specific references to CS gas. and aAt the same time, police shot less-
26 lethal rounds at the crowd. (BV 1.5)

27
28 30. At 10:37 p.m., the direction "Kettle and push south" was given.⁶⁴ (GL 4.20)

29
30 ⁵⁹ Staff Note: CAD Report, pages 13 – 14, seems to indicate that BPD was attempting to move
the crowd by blocking the intersection.

31 ⁶⁰ BPD Report, page 26, paragraph 2 (batons used); Benjamin Schaub, PRC Meeting,
December 10, 2014 (witnessed officers attacking non-violent protesters)

32 ⁶¹ BPD Report, page 26, paragraph 1.

33 ⁶² BPD Report, page 29, paragraph 2.

34 ⁶³ CAD Report, page 14 (10:15 p.m. taking rocks, taking rocks; 10:18 p.m. taking missiles;
10:39 p.m. taking on missiles)

⁶⁴ CAD Report, page 15.

1
2 31. At 11:12 p.m. the CAD reports from Telegraph and Haste, "Peaceful now, will need
3 to move them with skirmish line."⁶⁵ (GL 4.21)

4
5 32. Another report around 11:18 p.m. states "Fred's Market, man shot w/ projectile
6 BFD loaded w/rig."⁶⁶ The subject was transported to Alta Bates

7
8 33. At approximately 11:30 p.m., the decision was made to disperse the crowd,
9 although the crowd at this time was largely peaceful.⁶⁷ (AB 5.23) (GP 3.20) Staff Note:
10 Possible conflict here as CAD report states: 11:08 p.m. "crowd trying to set CHP vehicle
11 on fire"; 11:34 p.m. "crowd of 500-600 focused on us"; 11:36 p.m. "hostile crowd."

12
13 34. A clearly audible (un)lawful assembly was declared. It is important to note that the
14 crowd at this time was largely peaceful though vocal in nature. (GP 3.20) BPD and
15 mutual aid units began to form around the protesters, who were largely in the area of
16 Telegraph and Haste.⁶⁸ (AB 5.23) (GP 3.21) There appears to have been a decision that
17 gas would likely be used in dispersing the large but at this point, peaceful protest, as
18 police officers were told to put on their masks.⁶⁹ (GP 3.21)(GL 4.21)

19
20 35. Dispersal orders began again at 11:37 p.m.⁷⁰ Directions were repeatedly given to
21 drive the crowd south toward Oakland. Protesters experienced being "driven," hit with
22 batons and doused over and over again with CS gas, while they were complying with BPD
23 [police?] commands to proceed on a march of almost a mile.⁷¹ (GL 4.21 Shortly thereafter
24 a dispersal order is given, and the crowd begins to move south.⁷² (AB 5.23)(GP 3.21) The
25

26
27 ⁶⁵ CAD Report, page 16 (11:04 p.m. peaceful at this time; 11:12 p.m. peaceful now)

28 ⁶⁶ CAD Report, page 16.

29 ⁶⁷ Gabriel Rogers, City Council Meeting, December 16, 2014; Berkeleyside Live Blog from
30 December 6, 6:30 p.m. thru December 7, 2:45 a.m;

31 ⁶⁸ Andrea Pritchett, City Council Meeting, December 16, 2014; BPD Report, page 25,
32 paragraph 3

33 ⁶⁹ Zachary Running Wolf, City Council Meeting, December 16, 2014; Approximately 11:40
34 p.m., Berkeleyside reported that "Some of the protestors are sitting on the ground. The
demonstration appears to be peaceful." ; CAD Report, page 16.

⁷⁰ CAD Report, page 17.

⁷¹ Steven O., City Council Meeting, December 16, 2014 (stated he was one of the hundreds of
peaceful protestors that was tear gassed. He said that he witnessed bystanders, media, and
students that received tear gas as they were retreating).

⁷² CAD Report, page 17

1 police continue to try and move the crowd southbound.⁷³ (AB 5.23) (GP 3.21) Uses of
2 force could be seen in the movement of the crowd by means of baton and thrusting
3 motions.⁷⁴ (GP 3.21)
4

5 36. The scene is extremely disorganized in nature and the formation of the police
6 skirmish line compounded with confusing directions only serve to enhance the chaotic
7 nature of the scene and seemed to aggravate the conditions.⁷⁵(GP 3.22) As some of the
8 police try and move one portion of the crowd southbound, another group is in another
9 area. The scene is very confused, with police forming into different skirmish lines and
10 confusing directions being given to protesters as to where they were supposed to go.⁷⁶
11 Numerous residents reported being told to move in a given direction, only to confront
12 another line of officers.⁷⁷ Numerous protesters reported being hit with batons as they
13 attempted to comply with the dispersal orders.⁷⁸ (AB 5.24)
14

15 37. At around 12:20 a.m., the process to “drive the crowd south” was renewed.
16 Orders stated, “Force the issue, keep moving them south.”⁷⁹ (GL 5.23)) It appears that
17 many in the crowd were forced to walk well into Oakland, as the police presence
18 prevented them from leaving the crowd. The combination of repeated CS gas exposure
19 along with the lengthy walk resulted was extremely impactful, and there were reports of
20 people suffering physical and emotional injuries as a result. At approximately 12:32 a.m.
21

22 ⁷³ Walker Quinn, City Council Meeting, December 16, 2014

23 ⁷⁴ BPD videos.

24 ⁷⁵Ted Ambrose, City Council Meeting, December 16, 2014 (stated that as the protest began to
25 die down he other protestors were on a side street where the police blocked them in and they were
26 forced to break down a fence to escape. As they were escaping the police shot rubber bullets and
27 tear gas at them); BPD videos.

28 ⁷⁶ Nicky M., City Council Meeting, December 16, 2014 (told the council that she witnessed a
29 total disconnect between citizenry and the police. She said she was on Telegraph Avenue and
30 heard the cops scream skirmish line and then cops dressed in battle gear ran over them); BPD
31 videos;

32 ⁷⁷ Ted Ambrose, City Council Meeting, December 16, 2014; BPD Report, page 26, paragraph
33 3

34 ⁷⁸ Nicky M., City Council Meeting, December 16, 2014; Male Speaker, City Council Meeting,
December 16, 2014; Berkeleyside reported, “Cindy Pincus, who identified herself as an intern
minister at the First Unitarian Society of San Francisco, said she was hit from behind with a police
baton just after midnight ‘while retreating peacefully . . .’ A police officer had begun jabbing a
protestor with the end of his baton. I turned around to retreat and passed a woman who had fallen
and was being trampled. I bent down to pick her up under one armpit while another woman
grabbed her other arm. I saw an officer raise his baton over my shoulder and was struck on the
back of the head as I was bent forward.” She distributed a picture of her head bleeding from the
wound. http://www.huffingtonpost.com/2014/12/08/berkeley-protest-cindy-pincus_n_6290652.html

⁷⁹ CAD Report, page 18.

1 the police again report that they are being hit with projectiles⁸⁰ (AB 5.25)(GP 3.23) and at
2 the same time police vehicles were vandalized including with writing of inflammatory
3 language.⁸¹ (AB 5.26) (GP 3.23)
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5 38. Another major CS gas deployment began at 1 a.m. at approximately Telegraph
6 and Parker.⁸² (GL 5.23) At 1:00 a.m. the police began to use gas, as they continued to
7 push the protest southbound.⁸³ (AB 5.27) The crowd continued to move southbound,
8 ultimately entering Oakland⁸⁴, and the police department continued to use CS gas.⁸⁵ (AB
9 5.27) Marchers testified that they were told to go to Oakland and were driven over the city
10 line with multiple deployments of CS gas, raised batons and baton jabs. (GL 8-4-2015)

11 The march moved into Oakland around 1:30 a.m.⁸⁶ (GL 5.23)
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30 ⁸⁰ CAD Report, page 19.

31 ⁸¹ BPD Report, page 27, paragraph 3; CAD Report, pages 18-19.

32 ⁸² CAD Report, page 20.

33 ⁸³ Jackson R, PRC Special Meeting, February 25, 2015 (stated that he was beaten with
overhead baton strikes; he saw the police line-up and then charge toward the protestors; police
ordered them to march to Oakland); BPD Report, page 29, paragraph 2.

34 ⁸⁴ John, PRC Meeting, December 10, 2014 – stated that protestors were marched to Oakland

⁸⁵ BPD Report, page 31, paragraph 1.

⁸⁶ CAD Report, page 22.

1 the police again report that they are being hit with projectiles⁸⁰ (AB 5.25)(GP 3.23) and at
2 the same time police vehicles were vandalized including with writing of inflammatory
3 language.⁸¹ (AB 5.26) (GP 3.23)
4

5 38. Another major CS gas deployment began at 1 a.m. at approximately Telegraph
6 and Parker.⁸² (GL 5.23) At 1:00 a.m. the police began to use gas, as they continued to
7 push the protest southbound.⁸³ (AB 5.27) The crowd complied with officer demands to
8 move south~~continued to move southbound~~, yet the police continued to pursue them.
9 During this time, ultimately entering Oakland⁸⁴, and the police department continued to
10 use deployed CS gas at six different intersections on Telegraph.⁸⁵ ⁸⁶ (AB 5.27) No
11 evidence of dangerous crowd activity has been provided to the commission to justify these
12 repeated deployments. Marchers testified that they were told to go to Oakland and were
13 driven over the city line with multiple deployments of CS gas, raised batons and baton
14 jabs. (GL 8-4-2015) The march moved into Oakland around 1:30 a.m.⁸⁷ ⁸⁸ (GL 5.23)
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27 ⁸⁰ CAD Report, page 19.

28 ⁸¹ BPD Report, page 27, paragraph 3; CAD Report, pages 18-19.

29 ⁸² CAD Report, page 20.

30 ⁸³ Jackson R, PRC Special Meeting, February 25, 2015 (stated that he was beaten with
overhead baton strikes; he saw the police line-up and then charge toward the protestors; police
ordered them to march to Oakland); BPD Report, page 29, paragraph 2.

31 ⁸⁴ ~~John, PRC Meeting, December 10, 2014 – stated that protestors were marched to Oakland~~

32 ⁸⁵ Two videos of 1-1:30 AM Sunday December 7 2014 Telegraph Avenue:

33 <https://www.youtube.com/watch?v=xUHvro4idPY> ;

34 <https://www.youtube.com/watch?v=Rn7Bu8TCXU8>

⁸⁶ BPD Report, page 31, paragraph 1.

⁸⁷ John, PRC Meeting, December 10, 2014 – stated that protestors were marched to Oakland

⁸⁸ CAD Report, page 22.

Through July 29, 2015 meeting

PRC RECOMMENDATIONS REGARDING BPD RESPONSE ON DECEMBER 6 & 7, 2014

Communication

- ***New Recommendation as a preamble to the Communication section***

PRC (6.24.15)

Police officers will seek to navigate complex and confusing crowd situations which may have mixed elements of legal and illegal, peaceful and violent behavior. Facilitation of free expression, de-escalation of tension, and peaceful resolution of conflict are primary goals of police interaction with crowds.

- ***Recommendation #1***

BPD

We recommend the Department get clarity on the availability of regional radio interoperability for common encrypted radio channels to improve communications with mutual aid partners during large scale events.

PRC (6.24.15)

We recommend the Department investigate and determine the availability of regional radio interoperability for common tactical and recorded radio channels to improve communications with mutual aid partners during large scale events, and that the department communicate directly with EBRCS and ask for a speedy resolution to these questions and any appropriate training that is necessary.

- ***Recommendation #2***

BPD

We recommend the Department use social media proactively before and during the event to communicate with participants. As dispersal orders are given over the loud speaker social media could be used to communicate more detailed information to the crowd.

PRC (6.24.15)

We recommend the Department use social media proactively before and during the event to communicate with participants. As dispersal orders are given over the loud speaker social media could be used to communicate more detailed information to the crowd; all communications be clearly identified as coming from BPD. We urge the City to adopt rules for BPD's use of social media as quickly as possible.

- **Recommendation #3**

BPD

Explore the use of BPD Negotiators to enhance communication with the crowd and crowd leadership before and throughout the event.

PRC (6.24.15)

The BPD should focus on enhancing tools for communication during the course of a demonstration to ensure it is peaceful, and that the tools include the use of BPD negotiators; the PRC urges a focus on two-way communications to facilitate peaceful demonstrations.

- **Recommendation #4**

BPD

BPD should acquire a high quality mobile mounted public address system. This equipment would also be an asset during natural disasters.

PRC (6.24.15)

(The PRC endorsed BPD's Recommendation #4 as written.)

Tactical Command

- **Recommendation #5**

BPD

Tactical command decision making and responsibility should be relocated from the Department Operations Center to the field. We recommend coordination of squad movements happen in the field.

PRC (6.24.15)

(The PRC endorsed BPD's Recommendation #5 as written.)

- **Recommendation #6**

BPD

Command should make efforts to ensure as much mission clarity as possible when resources are dispatched.

PRC (7.22.15)

(This recommendation is an alternative to both Recommendations #6 and #7 of the BPD.)

The PRC agrees that a lack of mission clarity hampered the BPD's success on December 6, but where the BPD sees lack of clarity as a tactical confusion about the priority of specific tasks, we find a strategic lack of clarity. Deployments during demonstrations should include clear and

specific objectives. Field Commanders should be given specific guidelines and priorities to consider when making deployment decisions, including whether a given police action will improve the situation, or escalate tension and confrontation between police and protesters, and should make redeployment decisions proactively based on known situational awareness and the approved guidelines.

- **Recommendation #7**

BPD

We recommend commanders in the field make redeployment decisions proactively based on known situational awareness.

PRC (7.22.15)

(See PRC Recommendation to #6 above.)

- **Recommendation #8**

BPD

Opportunities for the police to deescalate from crowd control to crowd management tactics need to be recognized and seized.

PRC (7.15.15)

1) The City considers non-violent demonstrations of concern about community issues to be positive and healthy activities. The City will interact with such demonstrations primarily as events to be facilitated rather than as threats to public safety. ~~Therefore, the BPD should not be the primary point of contact between the City and demonstrations.~~

2) Heavily armed, massed police using crowd control tactics may inflame an assembly and incite rather than prevent violent clashes. They can intimidate peaceful demonstrators and promote alienation and confrontation.¹ The need for sufficient police resources must also be balanced against the chilling effect of a large and visible police presence.²

3) BPD orders call for protecting First Amendment activities (freedom of speech and assembly).³ For this protection to have meaning, police must win the trust of the assembly that they can demonstrate in safety.

4) Police interaction with a demonstration or other public event should

¹ "Tony Ribera, San Francisco police chief from 1992 to 1996, said law enforcement agencies are usually most successful at handling demonstrations when they approach with a non-confrontational stance and ramp up when necessary. 'It's hard to have a confrontational situation, then pull back from that.'" See: <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>.

² OPD Crowd Control policy.

³ Berkeley General Order C-64 Crowd Control, paragraph 26.

begin with a posture of crowd management, unless the event commences as an illegal assembly. Current BPD policy requires that a clear and present danger of imminent violence as a prerequisite for declaration of an illegal assembly, making it clear that non-violent civil disobedience is not grounds for such a declaration.⁴ If police must move to a crowd control posture, the goal should be to de-escalate back down to crowd management. Police officers must make every effort to reduce tension and de-escalate conflict, with support from non-sworn City staff and elected/appointed officials.

5) a) It is essential to recognize that all members of a crowd of demonstrators are not the same.

b) Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger.

c) This understanding does not mean BPD cannot take enforcement action against the crowd as allowed under BPD policy, but BPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.

Deployment

- **Recommendation #9**

BPD

Deploy resources flexibly in crowd management roles designed to keep events peaceful.

PRC (7.22.15)

(This recommendation is an alternative to both Recommendations #9 and #10 of the BPD.)

BPD should review its operational deployment of its resources, such as bicycle, and parking enforcement officers, in crowd management roles in order to provide greater mobility, flexibility and accessibility. The review should focus on areas of opportunity focusing on the peaceful maintenance of events, crowd/departments communication and violent element identifications. Training and resource proposals should be developed by BPD to achieve this end and should be reviewed with the

⁴ Berkeley General Order C-64 Crowd Control, paragraph 62.

PRC.

- **Recommendation #10**

BPD

Increase staffing of bicycle officers, motorcycle officers and parking enforcement officers for large scale crowd management events.

PRC (7.22.15)

(See PRC Recommendation to #9 above.)

- **Recommendation #11**

BPD

Deploy joint police and fire scout teams to manage small fires and scout medical calls.

PRC (7.22.15)

(The PRC endorsed BPD's Recommendation #11 as written.)

Maneuver

- **Recommendation #12**

BPD

Have a contingent of officers to move with the crowd, so that violent elements in the crowd will see a continuous police presence.

PRC (7.29.15)

As an alternative to this Recommendation #12, reference is made to PRC Recommendations #8 and #9 above.

- **Recommendation #13**

BPD

Deploy squads with dedicated drivers who remain with the vehicles to facilitate maneuvers and vehicle security.

PRC (7.22.15)

(The PRC endorsed BPD's Recommendation #13 as written.)

Situational Awareness

- **Recommendation #14**

BPD

Explore technology that can improve the quality and timeliness of information available to decision makers.

PRC (6.24.15)

Before BPD implements the use of any additional surveillance and data gathering technology, the use of that technology shall be brought to PRC and the City Council for approval.

- **Recommendation #15**

BPD

Consider proposing changes to the City Council Resolution 51,408-N.S., to permit the use of helicopters in instances of significant civil unrest.

PRC

Dispersal Orders

- **Recommendation #16**

BPD

Issue fewer dispersal orders and record evidence that the crowd was able to hear the orders.

PRC (7.22.15)

Consistent with existing policy, dispersal orders should only be given if there is clear evidence that the focus of the crowd has become violent. If and when it is determined that a dispersal order is necessary, several quality dispersal orders should be given. BPD should record the orders to establish that the orders were audible to the crowd. BPD should take appropriate steps to ensure that a dispersal order is audible throughout the entire crowd. After an initial dispersal order has been given, if a crowd reassembles in a different location, that new location must be reevaluated to determine if it is an unlawful assembly, and a new dispersal order must be given. We specifically recommend that BPD discontinue the practice of continuous dispersal orders.

- **Recommendation #17**

BPD

Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas.

PRC (7.29.15)

Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas; the PRC should review the proposed new script before it becomes BPD policy.

Use of Force

- **Recommendation #18**

BPD

We recommend that BPD review its policy regarding the use of CS gas and batons in crowd control situations.

PRC (7.29.15)

BPD, in conjunction with the PRC, should review its policy regarding the use of CS gas and batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs, rakes or overhead strikes, and with the intent of putting substantial constraints on the use of CS gas in crowd control and crowd management.

- **Recommendation #19**

BPD

Less Lethal operators should be briefed regarding the rules of engagement prior to deployment. Command should review the use of force as it relates to accomplishing mission objectives with less lethal operators, prior to deployment.

PRC

- **Recommendation #20**

BPD

Skirmish lines should be deployed only in situations where the use of force that may be necessary to enforce the line is warranted by the objective of deploying the line.

PRC (7.22.15)

(The PRC endorsed BPD's Recommendation #20 as written.)

- **Recommendation #21**

BPD

We recommend that the Department continue to train and reinforce disciplined use of baton strikes by officers to avoid striking people in no strike zones.

PRC

- **Recommendation #22**

BPD

Preparatory orders warning officers of the impending use of chemical agents should be announced over the radio.

PRC

- **Recommendation #23**

BPD

Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas.

PRC

Accountability

- **Recommendation #24**

BPD

To comply with our existing policies an After Action Report (AAR) should be written after each incident even if only in summary form.

PRC (7.22.15)

BPD should comply with its existing policies and an After Action Report (AAR) should be written after each incident, even if only in summary form, within 72 hours.

- **Recommendation #25**

BPD

Improve accountability for the deployment and use of less lethal munitions and CS gas. Use of less lethal munitions should be recorded in the after action report and the policy should be updated to include this requirement.

PRC

Training

- **Recommendation #26**

BPD

All officers should continue to receive crowd management training every two years. We recommend the following trainings be developed:

- *Commanders should conduct crowd management table top exercises, in addition to departmental training, to explore topics such as planning, command and control, mutual aid management, tactics, and operations center logistics.*
- *All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.*
- *Mobile Field Force training with regards to conducting targeted arrests. Including a tactical review of how to deploy in order to better support a mission of targeted arrests while maintaining the ability to transition into crowd control formations.*
- *Train sufficient personnel to use higher quality camera systems to gather better video evidence at protests.*

PRC

- **Recommendation #27**

BPD

Commanders should attend training to improve their understanding of BPD's current capabilities and limitations in crowd management and control which should enhance planning and tactics.

PRC

- **Recommendation #28**

BPD

We recommend the creation of a document on BPD website which will provide information on how to conduct or participate in a protest in a safe and legal manner.

PRC

Media

- **Recommendation #29**

BPD

We recommend the BPD Public Information Officer investigate the viability of establishing a regional media credentialing system.

PRC

- **Recommendation #30**

BPD

We recommend the Department develop a collaborative training for press to enhance their safety and safeguard the First Amendment right of a free press.

PRC

Equipment

- **Recommendation #31**

BPD

We recommend the Department invest in quality video cameras, live stream capability and video capture software to improve situational awareness.

PRC

- **Recommendation #32**

BPD

The Department should investigate the use of body armor to be worn underneath a uniform of the day, to protect officers from projectiles while minimizing the projection of force to protestors.

PRC

AGGREGATION OF COMMISSIONER PROPOSALS ON BPD RECOMMENDATIONS STILL TO BE CONSIDERED AS OF JULY 30, 2015.

(Not all Commissioners commented on every BPD Recommendation.)

Situational Awareness

- **Recommendation #15**

BPD

Consider proposing changes to the City Council Resolution 51,408-N.S., to permit the use of helicopters in instances of significant civil unrest.

Alison Bernstein (AB):

BPD and PRC should seek clarification from the Council as to whether their intent was to prevent BPD from accessing information from helicopters that are being deployed by mutual aid responders.

George Lippman (GL):

Oppose. Helicopters are likely to further increase tension and distrust.

George Perezvelez (GP):

This amendment could be considered if the use of helicopters were found to be necessary during hostage negotiations and swat team operations. Under the BPD recommendation, the definition of "significant" would have to be thoroughly explored.

Terry Roberts (TR):

BPD should submit the details, rationale, impacts, costs, criteria and proposed guidelines for helicopter use that would support such a policy for PRC review with the goals of addressing public safety but reducing tensions and conflicts, and preserving free expression in large public protests.

Ann Rogers (AR):

Clarification needed from City Council on use by other entities and to what extent bpd may utilize their information.

[Above proposals submitted before Commissioners were provided with language of Resolution and background materials.]

Use of Force

- **Recommendation #19**

BPD

Less Lethal operators should be briefed regarding the rules of engagement prior to deployment. Command should review the use of force as it relates to accomplishing mission objectives with less lethal operators, prior to deployment.

AB:

Agree, but would specifically include mutual aid responders in the text:

All less lethal operators, *including mutual aid responders*, should be briefed regarding the rules of engagement for the specific mission prior to engagement. Command should review the use of force with all operators, *including mutual aid responders*, as it relates to accomplishing mission objectives prior to deployment.

GL:

Oppose. Police should not use less lethal weapons to shoot into crowds.

GP:

Agreed. This should particularly impact Mutual Aid Pacts responding localities in order to ensure compliance to established BPD general orders and City ordinances.

TR:

Agree with Comm. Perezvelez language but add: A plan for implementation should be reviewed by the PRC and be included in the appropriated governing regulations and policies.

AR:

concur w/ Commissioner Bernstein.

- **Recommendation #21**

BPD

We recommend that the Department continue to train and reinforce disciplined use of baton strikes by officers to avoid striking people in no strike zones.

AB:

The numerous reports from citizens of being struck by batons as they were engaged in peaceful, lawful demonstrations are a cause of significant concern. BPD should review and enhance training regarding the disciplined use of baton strikes by officers. General Order U-02 specifically list the non-target zones of the head, neck/throat, heart, spine, kidneys and groin. Consistent with our prior recommendation, BPD should review its policy regarding the use of batons during crowd control and management situations, specifically as to when and how jabs should be authorized in crowd management and control situations. BPD should prohibit the use of over the head/shoulder baton strikes in crowd control and crowd management situations

GL; also Bulmaro Vicente (BV), who suggested identical language except for the sentence added to the end of the first paragraph:

Support. However, the current training should be reviewed by the PRC for enhancement as people were repeatedly hit in December in no-strike zones. Discipline must also be augmented. Strikes to no strike (non-target) zones when should be made a firing offense except in cases where deadly force would be justified. **The Department should also focus on training that avoids the use of baton strikes to accomplish objectives.** [Emphasis in BV's original.]

Also, to increase public understanding and for greater accountability, Use of Force General Order U-02 should be enhanced to include list of non-target zones from the BPD Mobile Field Force Training: Head, neck/throat, heart, spine, kidneys, groin.

Finally, U-2 Section 2(a), the quote to the governing US Supreme Court decision *Graham v. Connor*, reference to reasonable force should be modified to correctly refer to “*objectively* reasonable under the totality of the circumstances as they appear through the eyes of the officer.” It should also clarify that this test requires an immediate threat posed by an individual suspect. A general concern about overall threat to safety is insufficient to warrant baton strikes.

GP:

See Recommendation #18.

[#18: BPD, in conjunction with the PRC, should review its policy regarding the use of CS gas and batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs, rakes or overhead strikes.]

TR:

[Agreed with Comm. Perezvelez language re #18] but add: The current training content and frequency should be reviewed by the PRC.

AR:

requires close review by BPD & PRC. Should include Bernstein's language about mutual aid situations as per # 19.

- **Recommendation #22**

BPD

Preparatory orders warning officers of the impending use of chemical agents should be announced over the radio.

AB:

The use of CS gas on December 6 is a cause of major concern. Not only is it unclear whether the actions of the crowd warranted such use, it is unclear how decisions were made to continue to deploy CS gas, and whether the continued use was necessary. Careful review of the policies regarding both the initial use of CS gas and its continued deployment must be undertaken by the BPD in conjunction with the PRC. New policies need to be drafted more carefully delineating when and how CS gas should be used in crowd management and control situations.

If and when CS gas is deployed, a public announcement regarding the impending use should be made, as well as radio broadcast to all law enforcement personnel.

GL:

Oppose. PRC opposes the use of chemical agents against First Amendment gatherings. If used, use of gas should be publicly announced.

GP:

Agreed. Preparatory orders should be given to officers via radio when an impending use of chemical agents has been authorized. Conversely, warnings should be given to the crowds in order to facilitate the adherence to a dispersal order. Fair warning could alleviate the amount of chemical agent use as well as minimize injuries.

TR:

Agree with Comm. Perezvelez language but add: All policies, regulations, and training should be amended accordingly and reviewed by the PRC.

AR:

requires close review by BPD & PRC as to if or when to use it, w/ re-write to carefully delineate.. Audible warnings must be given, with ample opportunity to disperse. Concur w/ Perezvelez that this should help minimize the need to use it.

- **Recommendation #23**

BPD

Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas.

[Commissioners Lippman, Perezvelez, Roberts, and Rogers expressed support for the BPD's recommendation as written.]

Accountability

- **Recommendation #25**

BPD

Improve accountability for the deployment and use of less lethal munitions and CS gas. Use of less lethal munitions should be recorded in the after action report and the policy should be updated to include this requirement.

GP:

Agree. In addition an inventory of current supplies should be performed prior to the event and strict cataloging and recording of issuance to individual teams must be followed. An after event inventory should also be performed to ascertain inventory as well as usage amounts.

AB:

I agree with Commissioner Perezvelez's language, and would include Mutual Aid responders.

GL:

Support. There should also be before and after inventories and each officer should be required to account for each use of munitions in their use of force report immediately after the event.

TR and AR:

Agree

Training

- **Recommendation #26**

BPD

All officers should continue to receive crowd management training every two years. We recommend the following trainings be developed:

- *Commanders should conduct crowd management table top exercises, in addition to departmental training, to explore topics such as planning, command and control, mutual aid management, tactics, and operations center logistics.*
- *All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.*
- *Mobile Field Force training with regards to conducting targeted arrests. Including a tactical review of how to deploy in order to better support a mission of targeted arrests while maintaining the ability to transition into crowd control formations.*
- *Train sufficient personnel to use higher quality camera systems to gather better video evidence at protests.*

GL:

PRC should be involved in developing the training.

GP:

This should be done in accordance to surveillance restrictions per policy as well as mostly targeting violent elements. This will minimize any belief of 1st Amendment right violations.

TR:

Agree with BPD rec but add: The PRC should be involved in developing the training. (per Comm. Lippman rec.)

AR:

use of video is surveillance and should conform to policies restricting its use to targeted situation that indicate violence. Privacy protections must be in place. Requires BPD & PRC joint review

• **Recommendation #27**

BPD

Commanders should attend training to improve their understanding of BPD's current capabilities and limitations in crowd management and control which should enhance planning and tactics.

GL:

Support. The PRC should be part of this training.

GP and AR:

Agree

TR:

Agree with BPD rec but add: The PRC should be involved in this training. (per Comm. Lippman rec.)

• **Recommendation #28**

BPD

We recommend the creation of a document on BPD website which will provide information on how to conduct or participate in a protest in a safe and legal manner.

GL:

Support. The PRC should be part of this training.

GP and AR:

Agree

TR:

Agree with BPD rec but add: The PRC should be part of this training. (per Comm. Lippman rec.)

BV:

We recommend the creation of a document on the BPD website which will provide information on how to conduct or participate in a protest in a safe and legal manner. We recommend the creation of a document on the BPD website which will provide information on how BPD will respond to peaceful protest.

Media

• **Recommendation #29**

BPD

We recommend the BPD Public Information Officer investigate the viability of establishing a regional media credentialing system.

GL:

Support regional media credentialing, but through a system not managed by law enforcement. Police should not be involved in determining who is legitimate media. The policy should be to recognize all media even if not credentialed by the police, and if in doubt to allow people to film and photograph.

• **Recommendation #30**

BPD

We recommend the Department develop a collaborative training for press to enhance their safety and safeguard the First Amendment right of a free press.

GL:

Support. The PRC should be part of this training.

GP:

Understanding that media outlets might not all be credentialed. There are several media outlets that employ contractors, some of which do not have press documentation readily available or of an official nature.

AR:

BPD needs to reach out to media outlets that employ contractors in order to establish an agreed-on way to identify the contractors. I do not advocate unfettered access to anyone w/ a camera or cell phone based solely on the person's say-so that s/he "is media." Ways to establish this must be explored as media may require protection and support to do their job.

Equipment

- **Recommendation #31**

BPD

We recommend the Department invest in quality video cameras, live stream capability and video capture software to improve situational awareness.

GL:

Needs discussion of First Amendment and privacy protections. Refer to PRC position on Recommendation 14.

GP and AR:

Agree.

BV:

We recommend the Department invest in quality video cameras, live stream capability and video capture software to improve situational awareness. The funding will not be provided by the city, but from the department's own budget and/or grants from outside agencies.

- **Recommendation #32**

BPD

The Department should investigate the use of body armor to be worn underneath a uniform of the day, to protect officers from projectiles while minimizing the projection of force to protestors.

GP and AR:

Agree

- ***Additional original recommendations (from Comm. Lippman)***

- I. Mutual Aid.*

- 1. Abide by state law, section 8618 of the Legislative [Government] Code which states, "Unless otherwise expressly provided by the parties, the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident, including the direction of personnel and equipment provided him through mutual aid?"

- Abide by the Law Enforcement Mutual Aid Plan prepared by the California Governor's Office of Emergency Services which states that "the jurisdiction requesting mutual aid" is responsible for "advising responders what equipment they should bring?"

- Abide by the 1992 the Berkeley City Council resolution mandating that the BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum extent amount allowable by law.¹

- Account for the actions of other departments participating in a mutual aid activity in Berkeley: what equipment is brought into Berkeley, what type of less-lethal projectiles and how many rounds are discharged. The BPD owes the city an explanation of how the outside forces it invited in conducted themselves.

- Pathfinders, BPD personnel assigned to accompany mutual aid agencies in Berkeley, will not only facilitate communication but play an active role in supervising mutual aid and ensuring that mutual aid act under BPD command and follow BPD policies.

- II. Add before Dispersal section:*

- Police officers must make every reasonable effort to reduce tension and de-escalate conflict, with the goal of avoiding an assembly unlawful. If, however, such a declaration is unavoidable, police should ensure that both adequate notice and opportunity to disperse are given, and that chemical agents, other use of force, and rushing into a crowd to make individual arrests are minimized.

- ***Other Key Issues for PRC consideration (from Comm. Roberts):***

- 1) How all BPD policies can effectively implemented by responding mutual aid agencies

- 2) Ensuring that the PRC is involved in follow up planning and actions resulting from the BPD report

- 3) How do we measure results?

- 4) Setting a process and time deadline for all recommendations to be fully evaluated and implemented

¹ Cite the 1992 law. "That the BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum amount allowable by law...advise such units that they will be expected to comply with [BPD] regulations and policies," and that if there are conflicts with other agencies over policies which cannot be resolved, "BPD reserves the right to elect not to deploy those units affected...Where the City of Berkeley has adopted more stringent standards, those will take precedence over county-wide standards within Berkeley."

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Wednesday, August 12, 2015 10:47 AM
To: Lee, Katherine
Subject: FW: use of CS gas

-----Original Message-----

From: Carol Denney [<mailto:carol.denney@no-smoke.org>]
Sent: Wednesday, August 12, 2015 10:35 AM
To: PRC (Police Review Commission)
Cc: Becky O'Malley
Subject: use of CS gas

Dear Police Review Commissioners,

I'm writing to express concern that your policy recommendations might allow the continued use of CS gas. The use of the term "tear gas" severely underestimates the effects of this chemical weapon banned for use by

the effects of which usually include tears streaming from the eyes, profuse coughing, exceptional nasal discharge that is full of mucus, burning in the eyes, eyelids, nose and throat areas, disorientation, dizziness and restricted breathing, severe coughing and vomiting.

Exposure may cause sensitization, severe pulmonary damage, and CS can also significantly damage the heart and liver.

Use of CS in war is prohibited under the terms of the Chemical Weapons Convention signed by most nations in 1993 with all but five other nations signing between 1994 and 1997. Only four nations have not signed the Chemical Weapons Convention and are therefore unhindered by restrictions on the use of CS gas: Angola, Egypt, North Korea and Somalia.

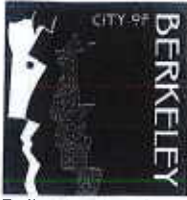
It should go without saying that this indiscriminate chemical weapon should not be used at protests. But it perhaps needs to be emphasized that even if CS gas were benign, it will be abused by the Berkeley Police Department under current leadership.

The December 2014 Black Lives Matter demonstrations showed clearly that the Berkeley Police were more than willing to sacrifice the civil rights of peaceful protesters at the moment a handful of unrepresentative vandals took advantage of the cover of the crowd. The Berkeley Police even cited the existence of a flier with a provocative message and graphic to justify treating an entire crowd as violent despite its having no connection to the Black Lives Matter movement.

As we sort through more sensible policy it is crucial for the Police Review Commission to hold sacrosanct the need to protect first amendment rights for everyone, and keep firmly in mind that a sizeable ratio of any group of people has respiratory, mobility, and cardiac disabilities which put them at serious risk from chemical assault. A moratorium on the use of CS gas should be made permanent, for there is no way this chemical weapon can be used in a specific way to target isolated vandals.

Thank you,

Carol Denney
1970 San Pablo #4
Berkeley, CA 94702



Police Review Commission (PRC)

July 13, 2015

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer *KJL*

Re: PRC Request Regarding Suspicious Activity Reports

As you are aware, the Police Review Commission has an ongoing concern about the Berkeley Police Department's use of Suspicious Activity Reports (SARs) and their submission to the Northern California Regional Intelligence Center. In October 2014, the City Council requested that staff review General Order N-17, which guides the BPD in this reporting. In response to that directive, the PRC established a subcommittee and, at its May 6, 2015 meeting, adopted the subcommittee's recommended revisions to G.O. N-17. Those revisions were previously sent to your department.

At that same meeting, the PRC voted to request that you provide complete copies of Suspicious Activity Reports, on a quarterly basis, to the Commission for review. This memorandum is being sent to transmit that request. The PRC also asks that, if the full SARs cannot be furnished to them, you advise what statute, regulation, or policy requires redaction or withholding.

Please let me know if you have any questions or need any clarification. Thank you.

cc: Christine Daniel, City Manager
PRC Commissioners

Lee, Katherine

From: Harris, Cynthia
Sent: Wednesday, August 12, 2015 4:49 PM
To: Lee, Katherine
Subject: FW: Non-Disclosure of Criminal Intelligence Reports to the Public

From: Stines, Christian O.
Sent: Wednesday, August 12, 2015 2:27 PM
To: Harris, Cynthia
Subject: Non-Disclosure of Criminal Intelligence Reports to the Public

California Government Code Section 6254 (f) is the state statute that covers the California Public Records Act and the exemption for the release of the data. The law states that records of investigations conducted or intelligence information are not public records, with some exception of specific data, under certain violations to the victim or their representative, unless it would endanger safety or the successful completion of an investigation .

A decade ago the California Office of Homeland Security, that became the California Emergency Management Agency and is now the California Office of Emergency Services, was not authorized to receive intelligence information as a state government agency. They went through the state legislative process to be approved access to the information through California Government Code 8585. That gave the employees of the agency the right to know.

* The other guidance we rely on at the state level is the attached California Attorney General Guidelines for Criminal Intelligence Files and Criminal Intelligence Operational Activities. The document draws heavily from 28 Code of Federal Regulations Part 23. The CA AG Guidelines also provide the interpretation from the Office of the Attorney General in some areas of 28 CFR Part 23. The document clearly defines intelligence information, the need to know, the right to know and who we can disseminate the information to based on the sections below.

* PRC officer has requested a copy from BPD.
(could not locate online)

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Thursday, August 06, 2015 2:28 PM
To: Lee, Katherine
Subject: FW: Review the policy - to minimize restrictions on public observation

From: Paul David King [<mailto:pking@berkeley.edu>]
Sent: Thursday, August 06, 2015 1:42 PM
To: PRC (Police Review Commission)
Subject: Review the policy - to minimize restrictions on public observation

To whom it may concern,

It is disconcerting to read that the Berkeley Police Department has issued a new order which places further restrictions on First Amendment protected activity of recording the police. Berkeley Police Department General Order (W-01) changes crucial wording and will allow the police more of an incentive to try to control what is an appropriate "safe" distance for people to record.

Penal Code 148 should catch any genuine interference with police duties. It is inevitable that some Berkeley police will use this new wording to further intimidate and restrict citizens who are engaging in legal monitoring of their actions. Placing someone far enough a way that they can't capture illegal or unprofessional police behavior shouldn't be up to officers for obvious reasons. Furthermore, proper police activity will also not be captured.

Given the current nationwide concern over police abuse, trust of officers is at a deep low, and with good reason. Retaliation, intimidation, violation of civil rights, and even murder have been well documented. That doesn't mean all police are bad or corrupt but it does rightly concern people who pay their salaries and may have to feel the weight of their abuse.

It will escalate tensions between police and activists while not truly providing police with more room to do their jobs. It seems like a tactic aimed at trying to put citizens in their place. That's just wrong and it's depressing to read that a city with Berkeley's history is allowing it to go forward.

Camera phones aren't going away and neither is the First Amendment. Please review this policy and do away with it.

Thank you,

Paul King
A Berkeley citizen

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Monday, August 10, 2015 11:06 AM
To: Lee, Katherine
Subject: FW: The Right to Watch

Follow Up Flag: Follow up
Flag Status: Flagged

From: Andrea Prichett [<mailto:prichett@locrian.com>]

Sent: Monday, August 10, 2015 10:37 AM

To: PRC (Police Review Commission); osha Neumann; OSHA NEUMANN ESQ.; Berkeley NAACP; Berkeley Copwatch; Copwatch Internal List

Subject: The Right to Watch

Dear Police Review Commissioners,

I am writing to you today to ask you to help me understand the revised "Right to Watch" policy. On Wednesday August 5, 2015, I witnessed two African American women who were stopped in their car by BPD officers. The woman who was driving was arrested, handcuffed and placed in a police car. The other woman actually owned the car. She was not arrested or even considered to be a suspect in any crime. However, the search of the car and her purse lead us to some questions about how searches are done. I am trying to get a copy of the police report of this incident from BPD.

Perhaps more importantly, this video reveals that the officers and I are struggling to understand what the new General Order W-01 means for everyday interactions. I invite you to watch this video (about 15 minutes of a 45 minute stop) and to consider how the change from Training Bulletin 91's "least possible restriction" on citizen observation to the new General Order's directive to "minimize restrictions" on citizen observation of police will actually play out in the street.

RIGHT TO WATCH AND SEARCH PROCEDURES

<https://youtu.be/Aeg2SD1A6LA>

Our concern is that officers who are unclear on the law or unwilling to be recorded will prevent witnesses from viewing a scene and use the excuse that they need to attend to safety concerns when no real safety issue exists. **How will the PRC protect the right of our citizens to watch the police in a meaningful way?** In order to effectively document interactions (as is our 1st Amendment right) we need to be able to see how searches are conducted. We need to bear witness to the ways in which officers make demands of people, ask for consent and verbally interact with citizens.

I hope that you will begin some serious conversations about how we can best provide for the safety of officers, the public and our constitutional rights.

sincerely,

Andrea Prichett
Berkeley Copwatch



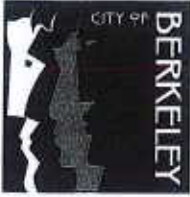
City of Berkeley Police Department Police Officer Demographics - July 2015

Rank	Total	Males						Females						
		W	B	H	A	O	W	B	H	A	O			
Chief	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Captain	3	2	0	0	0	0	0	0	0	0	0	0	0	0
Lieutenant	9	5	1	0	1	0	0	0	0	0	0	0	1	0
Sergeant	30	12	4	1	4	0	0	0	0	0	1	1	0	0
Officer	122	57	15	11	14	1	11	4	5	4	0	0	0	0
Recruit	7	4	0	1	1	0	0	0	0	0	0	0	0	0
Total	172	81	20	13	20	1	20	6	6	20	6	5	0	0
Sep-14	167	82	18	13	20	0	18	6	6	18	6	4	0	0
Change from Sept 2014	5	-1	2	No change	No change	1	2	No change	No change	2	No change	1	0	0
% of total Sworn		47%	11.6%	7.5%	11.6%	0.50%	11.6%	3.4%	3.4%	11.6%	3.4%	2.9%	0	0

Total White officers – 58.6%
 Total Black officers – 15%
 Total Hispanic officers – 10.9%
 Total Asian officers – 14.5%
 Total Female officers – 21.3%

Year Prior Percentages:

Total White officers – 59.8%
 Total Black officers – 14.2%
 Total Hispanic officers – 11.2%
 Total Asian officers – 14.2%
 Total Female officers – 20.3%



Police Review Commission (PRC)

August 7, 2015

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer *KJL*

Re: PRC Concerns Regarding BPD Knowledge of City Non-Smoking Law

At its July 15, 2015, meeting, the Police Review Commission opened a policy review regarding the need to improve training in the BPD regarding the City's Smoking Pollution Program Ordinance (Berkeley Municipal Code Chapter 12.70), and voted on specific steps they wished to take in this review.

In general, the PRC is concerned about the level of familiarity that BPD officers have with the smoking ordinance, especially as it relates to electronic smoking devices. The ordinance was amended effective October 30, 2014 to regulate the use of e-cigarettes in the same way as traditional tobacco cigarettes but, according to the policy complainant, she encountered two patrol officers on June 17, 2015, who were unaware of this.

Specifically, the Commission requests that:

- The BPD take advantage of training that I have confirmed that our own Public Health Division employees could provide to your officers.
- The BPD's Training & Information Bulletin No. 276, "City of Berkeley Smoking Restrictions (BMC Chapter 12.70)," dated September 23, 2008, be revised to incorporate the regulation of electronic smoking devices as provided by the 2014 amendments to the ordinance.
- You inform the Commission how changes in City ordinances and other policies are communicated to members of your department.
- You, or someone you designate, attend a PRC meeting for the purpose of answering questions Commissioners have about the department's familiarity with the smoking ordinance. Please contact me to coordinate a mutually convenient meeting date.

Thank you for your attention to these requests.