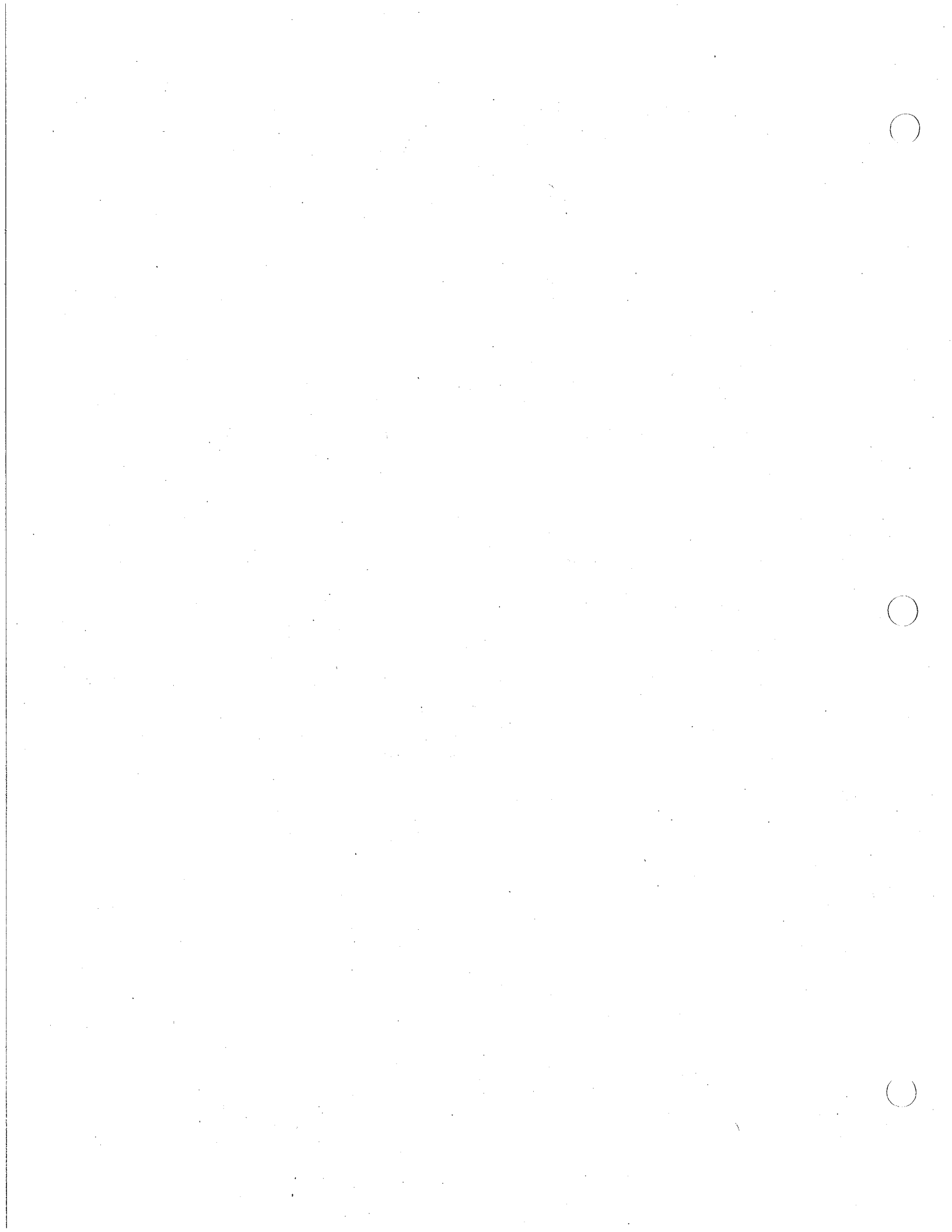


**SUPPLEMENTAL COMMUNICATIONS
FOR PRC SPECIAL MEETING
October 21, 2015**

1. G. Lippman revisions, pages 1 & 3 only
(A few changes to the Introduction)
2. Oct. 19, 2015 Memo from Terry Roberts
Re: Dec. 6 report Discussion and Recommendations Sections
(on reverse:)
3. Oct. 19, 2015 Memo from Terry Roberts
Re: Proposed added new recommendation to Dec. 6 report
4. Discussion section showing recommended revisions from Terry
Roberts and Alison Bernstein
5. Discussion section with revisions by George Lippman
6. PRC Commissioner votes on Recommendations
7.

Minority Report

Berkeley Police Review Commission Investigation
December 6-7, 2014 Police Response to Black Lives Matter Protest
(from George Lippman though his name isn't on it)
8. Oct. 20 Memo from Terry Roberts
Re: Narrative for possible minority opinion report.



2. INTRODUCTION

Beginning on December 6, 2014, the City of Berkeley experienced several days of protests sparked mainly by the deaths of ~~black~~ [Capitalize Black or say African American] men at the hands of police officers in Ferguson, MO and Staten Island, NY. The first night of protests drew the largest crowds; unfortunately, the peaceful resolve of the vast majority of demonstrators was ~~undermined by individuals intent on committing violent acts against people and property.~~ [62] [We've said it was also undermined by the police response.] The response of the Berkeley Police Department to these incidents, even by its own assessment, fell short of community expectations. The days and weeks that followed were marked by public outcry over perceived excessive use of force and infringement on First Amendment rights at the hands of police. The City Council and the Police Review Commission heard from scores of members of the public who witnessed or were victims of police action on December 6.

One of the several actions the Council took in response was, at its February 10, 2015 meeting, to ask the PRC to conduct an investigation:

Refer to the Police Review Commission to initiate an investigation into the police response to protests on December 6, 2014; the appropriateness of using tear gas, and other non-lethal munitions, and baton strikes to disperse the crowd; and make recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control, the use of force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as well as policies on mutual aid in First Amendment activity and crowd control incidents. . . .

The Council also refers the attached questions to the Police Review Commission to consider in conducting their investigation.¹

In conducting its investigation, the PRC listened to firsthand accounts of protestors' experiences at several of its meetings. On February 25, the PRC held a special meeting on the University of California campus to facilitate the ability of students – who comprised a large portions of the demonstrators – to speak about

¹ See Appendix 1.

G. Lippman revisions, pages 1 & 3 only

protests and the primary focus of the protests. The PRC also believes that it is important to provide not only a narrative of the events that transpired but, whenever possible, to identify the source for our conclusions, in order to allow the community to be as informed as possible.

Section [3] of our report presents our Findings regarding the events of December 6, 2014. In this section, we refer specifically to the Berkeley Police Department (BPD) or other agencies when appropriate, and refer simply to police or law enforcement when we are unsure whether only BPD is involved, or believe that other law enforcement agencies are involved. Following the Findings, the PRC offers its analysis of those events in the Discussion section (Section [4]). Next, in the Recommendations section (Section [5]), the PRC assesses each of the 32 recommendations in the BPD report. The Commission agrees with some recommendations, offers alternatives to others, and suggests recommendations of its own.

The Council asked the Commission to report its recommendations to the City Manager, Chief of Police and City Council by August 10. The PRC held ten special meetings, in addition to its 14 regular meetings. It took time to get a good and accurate picture of the protest that unfolded over several hours across a great geographical area. The protest moved from the campus area to the I-80 freeway and back, and involved crowds of up to 1,000 or more ~~600 (hundreds, more than 1,000, 1000 - 1500)?~~ people. The BPD policies concerning crowd control and crowd management, use of force, and mutual aid present challenging and complex issues.

In a separate action in February, the City Council asked the PRC to review all BPD policies and orders and make recommendations for revisions that it deems appropriate. In the course of this investigation, the PRC reviewed many applicable policies of the BPD and other agencies, and made numerous general recommendations about policy, which are described in this report. Thus, much of the groundwork has been laid for developing specific revisions to the BPD's policies. The PRC will work with the BPD on changes to all policies that are relevant to this investigation.

To: PRC
From: Terry Roberts
Oct. 19, 2015
Re: Dec 6 report Discussion and Recommendations Sections

It is clear that BPD was unprepared to adequately respond to the Dec 6 and related protests. The PRC has mostly focused on responding to BPD's report and recommendations, which is what the council ask us to do. So far BPD's responses have been in the context of what they could have done better, not in the context of what is called for using "best policing practices".

Therefore, given this lack of BPD's readiness to respond on Dec 6, I think the PRC has a responsibility to raise questions about BPD's overall state of preparedness for future responses to not only similar nonviolent situations, but also more complex and potentially threatening public safety situations (as examples-- more violent public protests; shooters in schools, theaters, protests, or other public places; coordinated terrorist-type activities; hostage situations; etc.) and the level of planning and training that is in place, along with preparation for related mutual aid coordination, all in the context of "best policing practices".

My attached suggested additions to the Dec 6 report Discussion and Recommendations Sections [REDACTED] seek to address these questions by recommending to the council that BPD submit a follow up report addressing its "readiness to respond" to these and similar situations using "best policing practices".

2



To: PRC
From: Terry Roberts
Oct. 19, 2015
Re: Proposed added new recommendation to Dec. 6 report

I propose that the PRC add a new recommendation to its report on Dec 6 protests as follows:

[REDACTED]

3



[4.] Discussion

[REDACTED]

-- Recommended revisions from Alison Bernstein 10-20-15

Overview. In reviewing the events of December 6, certain overarching themes became apparent as problem areas in the police response. These themes inform our recommendations, but we believe they should also be discussed and considered in a larger context of understanding how and where things went wrong in terms of the police response on December 6. The police response to the events on December 6 was deeply troubling. The PRC does not question that there were elements of the crowd that engaged in dangerous and disruptive conduct. However, the tactics employed by the police - including what appear to us to be the excessive use of less lethal force, including baton strikes and CS gas - did little to de-escalate [REDACTED] the crowd, and arguably antagonized members of the community who had been demonstrating peacefully.

The PRC also notes that [REDACTED] many of the problems experienced by BPD on December 6 could have been anticipated and prevented by far earlier, timelier preparation by BPD. We believe that the incidences that arose on December 6 shed [REDACTED] light on the need for more proactive thinking [REDACTED] on the part of BPD command staff. We live in a sophisticated, diverse urban environment. Many types of civil unrest or social or political actions can occur at any time. Street protests can be expected in Berkeley. We expect our police department to be trained, equipped and managed astutely and effectively, using best practices to deal with these situations as safely as possible for officers, protesters and the community at large. [REDACTED]

Based on our review [REDACTED] it is clear that the BPD needs to reevaluate its tactics and policies in the following arenas:

Crowd management: specifically de-escalation tactics. BPD needs to develop better strategies for de-escalation and retain a focus on crowd management instead of crowd control.

The BPD's approach on December 6, 2014, focused too heavily from the start on crowd control, when the emphasis should have been on crowd management. The crowd control posture resulted from an assumption that the protesters were largely motivated by those promoting an "FTP" event and associated with violent action. In other words, the emphasis was

1 on crowd control not crowd management, a critical flaw in planning that set the stage for what
2 was to follow. To the contrary, while the focus of the protests was on the actions of police
3 across the country. While the purpose of the demonstration was to protest the abusive actions
4 by police across the country, the vast majority of protesters intended to march peacefully. It is
5 imperative that BPD continue to develop tools and techniques to assist officers in navigating
6 complex and confusing crowd situations which may have mixed elements of legal and illegal,
7 peaceful and violent behavior.

8 The City considers non-violent demonstrations of concern about community issues to be
9 positive and healthy activities. Therefore, the City should interact with such demonstrations
10 primarily as events to be facilitated, rather than as threats to public safety. Facilitation of free
11 expression, de-escalation of tension, and peaceful resolution of conflict are primary goals of
12 police interaction with crowds. To advance and make meaningful its goal of protecting First
13 Amendment rights of freedom of speech and assembly,¹ police must win the trust of the
14 assembly that they can demonstrate in safety. Heavily armed, massed police using crowd
15 control tactics may inflame an assembly and incite rather than prevent violent clashes. They can
16 intimidate peaceful demonstrators and promote alienation and confrontation. ~~[cite to study if~~
17 ~~available now.]~~ [K.Lee comment: I spoke to the author; it is not available.] Retired San Francisco
18 police chief Tony Ribera "said law enforcement agencies are usually most successful at
19 handling demonstrations when they approach with a non-confrontational stance and ramp up
20 when necessary. 'It's hard to have a confrontational situation, then pull back from that.'"² The
21 need for sufficient police resources must also be balanced against the chilling effect of a large
22 and visible police presence.³

23 That some members of a crowd engage in violence or destruction of property should not
24 be allowed to taint the entire demonstration. BPD should develop and employ tactics that
25 protect the freedom of expression of the peaceful demonstrators, as well as their physical
26 safety. The PRC believes that the use of kettling, gassing, and running the demonstrators on
27 December 6 were counterproductive and antagonistic to the peaceful demonstrators. Moreover,
28 BPD must develop tactics to allow them to work with the vast majority of the demonstrators who
29 are peaceful, in order to contain and isolate the minority who are engaging in violence and
30 vandalism.

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33 ¹ BPD General Order C-64, para. 22.

34 ² See: <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. (Aug. 22, 2014.)

³ OPD Crowd Control policy, Sec. III.C.2, p. 4.

1 **Less Lethal Force:** ~~How to~~ BPD needs to create more accountability in the use of less lethal
2 munitions, and establish clearer guidelines for use of less lethal force in crowd control including
3 but not limited to CS gas, baton strikes and firing of bean bag rounds less lethal projectiles.
4

5 BPD staff told the PRC that they were unable to report how much CS gas or other less-
6 lethal munitions they or mutual aid responders used. However, it can be discerned from other
7 BPD materials that a significant amount of less-lethal ordnance was expended on December 6.
8 The inability of the BPD to account for how much CS gas and other less-lethal munitions were
9 used is troubling. While the PRC agrees with the BPD that accountability for the deployment
10 and use of less-lethal munitions should be improved, the PRC [REDACTED]
11 [REDACTED] accounting by mutual aid responders [REDACTED] (staff)

12 The available anecdotal information suggests that a large quantity of CS gas was used
13 on December 6. A December 7 BPD email states that "Last night's rioting consumed the vast
14 majority" of their on-hand supply of CS gas and 40 mm less lethal ammo, and requests that
15 departments supply "as much as you are willing to loan us"⁴ The Hayward police reported that a
16 count of their specialty impact munitions and chemical agents revealed a need to restock
17 inventory.⁵ (GL) One Alameda police officer reported shooting 10 muzzle blasts of CS gas and
18 throwing one CS canister, while another deployed five CS canisters; six other officers deployed
19 one CS canister each.⁶

20 The PRC is concerned that the use of CS gas on December 6 was excessive.
21 Additionally, given the failures in the recording equipment, It is unclear what prompted the
22 decision to use CS gas at the specific time and location, and how decisions were made to
23 continue to deploy CS gas, and whether the continued use was necessary. Given the existing
24 record, the PRC is concerned that the use of CS gas was arbitrary, and was not based on the
25 necessary understanding of the situation on the ground. The PRC is concerned that confusing
26 and conflicting orders by different squads of law enforcement made it impossible for protesters
27 to comply with orders at or near the time CS gas was deployed, and this confusion may have
28 contributed to the apparent failure to disperse or agitation of members of the crowd.
29 Additionally, the deployment of CS gas in densely populated neighborhoods poses a significant
30 risk to not only to non-violent protestors, but also bystanders, and the residents of the
31

32
33 ⁴ December 7, 2014 email from Lt. Frankel to undisclosed recipients.

34 ⁵ Hayward Police Department Special Response Unit, After Action Report – SRU
Operation # 14-14, page 7.

⁶ Alameda Police Report, various references.

1 surrounding neighborhoods.⁷ In addition to concerns about the quantity of gas that was used,
2 the PRC is concerned about BPD's lack of attention to ensuring medical care was readily
3 available for those exposed to the gas.

4 The PRC believes that Berkeley is out of step with its neighbors on the use of CS gas.
5 The San Francisco Police Dept. does not use tear gas.⁸ According to the Oakland Crowd
6 Control and Crowd Management Policy, "Chemical agents can produce serious injuries or even
7 death," and officers are to "use the minimum amount of chemical agent needed to obtain
8 compliance."⁹ Further, "The use of hand-thrown chemical agents or pyrotechnic gas dispersal
9 devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel.
10 Said devices shall be deployed to explode at a safe distance from the crowd . . ." ¹⁰ The PRC is
11 concerned that BPD's use of force policies do not includes similar language, which addresses
12 the significant concerns associated with the use of these types of less lethal munitions.

13 The PRC considered whether to recommend a ban on the use of CS gas for crowd
14 control purposes, but a majority of Commissioners do not support such a ban. Most felt that the
15 BPD should be able to resort to CS gas in crowd management if [REDACTED] needed. All
16 Commissioners feel strongly, however, that if CS gas is allowed, policies [REDACTED] be revised to limit
17 its use to narrowly prescribed circumstances. Moreover, the Commissioners were unanimous in
18 their opinion that if CS gas is to be deployed to disperse a crowd, then its possible use should
19 be made explicitly clear in a dispersal order, and medical aid should be arranged for in advance
20 of deployment.

21 BPD told the PRC that they were unable to report on how much less-lethal munition the
22 department expended. We do know that officers [REDACTED] fired one less-lethal foam baton
23 round shortly after 6:30 pm on MLK Jr. Way near Addison Street. Another report around 11:15
24 pm states "Fred's Market, man shot w/ projectile BFD loaded w/ rig." The subject was
25 transported to Alta Bates.¹¹ [REDACTED]

26
27
28 ⁷ Anonymous/Transgender person, PRC Meeting, December 10, 2014 (This Berkeley
29 resident resides near Telegraph and Peoples Park and told the PRC that tear gas went into the
30 apartment via open windows and caused food, dishes, and linens to be thrown out.).

31 ⁸ <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. Also, Capt. Theresa Gracie told the PRC Officer in a May 13, 2015 phone
32 conversation that SFPD has not used tear gas in the 20 years she has been with the
33 department.

34 ⁹ Oakland PD Crowd Control Policy, Sec. V.H.4.b. and V.H.4.c.

¹⁰ Oakland PD Crowd Control Policy, Sec. V.H.5.b.

¹¹ Cites needed. CAD Report? Baton round mentioned in BPD report, p. 21 without a time
given.

1 [REDACTED] (staff) No other
2 information has been made available regarding the use of less-lethal munitions [REDACTED]

3 [REDACTED]
4 Similarly to our concerns with the use of CS gas, the PRC is concerned that the use less
5 lethal munitions on December 6 was excessive. and that the absence of a contemporaneous
6 record makes it impossible to ascertain what prompted the decision to deploy. We are also
7 concerned that Berkeley's policy regarding the use of less lethal munitions in crowd control
8 situations is not in keeping with best practices, and need to be revised. Under Oakland policy,
9 less-lethal munitions "shall not be used for crowd management, crowd control or crowd
10 dispersal during demonstrations or crowd events,"¹³ and they "shall be used only when other
11 means of arrest are unsafe and when the individual can be targeted without endangering other
12 crowd members or bystanders."¹⁴ Berkeley has no such restrictions. The PRC is
13 recommending a revision of BPD's policy on using less-lethal munitions, to minimize the risk
14 that innocent persons will be hit. (staff)

15 Finally, the PRC believes that the After Action Report should be prepared in a timely
16 fashion, within 72 hours, and that each officer who uses force in a crowd management situation
17 should prepare an individual report detailing the force used, and explaining why that level of
18 force was necessary.

19
20 **Baton use:** How BPD needs to develop policies and trainings to assure that that the
21 approved use of batons in crowd control is in keeping with best practices, and that all of our
22 officers are only using batons in an approved manner. batons are used properly and
23 appropriately.

24 The numerous reports from ~~civilians~~ citizens (?) of being struck by batons as they were
25 engaged in peaceful, lawful demonstrations are a cause of significant concern. (Rec #21.)
26 These reports raise two categories of questions: whether this level of force was justified; and
27 whether batons were used properly. (GL)

28 *Level of force.* Under current BPD policy, batons, as a form of non-lethal force, may be
29 used by an officer: (a) to protect themselves or another from person from physical injury; (b) to
30 restrain or subdue a resistant individual; or (c) to bring an unlawful situation safely and
31

32
33 ¹² Hayward Police Dept. Special Response Unit After Action Report – SRU Operation #14-

34 ¹³ OPD Crowd Control Policy, Sec. VI.F.2.

¹⁴ OPD Crowd Control Policy

1 effectively under control.¹⁵ Additionally, in a crowd situation, only reasonable force may be used
2 if needed to disperse a crowd, make arrests, or move a crowd from an area.¹⁶ The PRC finds
3 that the level of baton deployment usage by police on December 6 did not conform to policy as
4 it was at times excessive and indiscriminate. (GL/staff.)

5 *Methods of baton use.* BPD officers are trained to use batons on certain target areas of
6 a subject's body. The target and non-target areas are specified POST training documents ■
7 and reviewed in BPD Mobile Field Force training. ■ Target areas are the "center mass," arms,
8 legs, and torso, with the heart to be avoided; non-target areas are the head, neck, throat, heart,
9 spine, kidneys and groin.¹⁹ (staff) Based on the reports from ■ of baton
10 strikes to the head area, it appears that some police officers violated training orders or policies
11 in this regard. Moreover, although the BPD explained that the strikes landing on non-target
12 areas resulted from the subject's movements, the number of reports of head strikes ■
13 ■ is inconsistent with that explanation. (GL/staff.) The PRC recommendation calls for a
14 thorough review of BPD's policy regarding the use of batons during crowd control and crowd
15 management situations. Particular attention should be given to the kind of authorized baton
16 strikes, to include the use of jabs and rakes.

17 The PRC believes that overhead baton strikes should be prohibited in crowd control and
18 crowd management situations.

19
20 **Technology:** ~~How to assure it is both operable and responsive to the needs of the~~
21 ~~mission. BPD needs to establish better practices to assure both that are technology is capable~~
22 ~~of meeting our needs and that there are redundancies in our systems if the technology fails..~~

23 There were a number of technological failures that contributed to the problems in the
24 police response to December 6, and all of which evince a lack of foresight, testing and built in
25 redundancies. BPD did not adequately test the East Bay Regional Communication System
26 (EBRCS) for use in large-scale multijurisdictional actions. EBRCS is designed to have specific
27 radio channels to be used for multi-agency actions.²⁰ However, some of agencies' lines were
28 encrypted and others were not. The failure of EBRCS meant that BPD was not able to
29 communicate with the mutual aid responders.

30
31 ¹⁵ General Order U-2, paragraph 19.

32 ¹⁶ General Order C-64, paragraph 6.

33 ¹⁷ As stated by BPD in a PRC meeting.

34 ¹⁸ See BPD February 27, 2014 outline, "Defensive Tactics – Baton"; also, BPD Report p.
52, Section O., Use of Batons.

¹⁹ Ibid.

²⁰ BPD Report, page 46, paragraph 4.

1 [REDACTED]

2 [REDACTED]

3 We live in a sophisticated, diverse, urban environment. Many types of civil unrest or
4 social or political actions can occur at any time. Street protests can be expected in Berkeley. We
5 expect our police department to be trained, equipped, and managed astutely and effectively,
6 using best practices to deal with these situations as safely as possible for both officers and
7 protestors.

8 Has BPD studied and learned from industry best practices and other agencies? If so,
9 why weren't some of BPD's December 6 & 7 report recommendations addressed long before
10 the protests occurred? Has BPD done adequate training internally, done table top exercises,
11 coordinated effectively with other mutual aid agencies, obtained critical, state of the art
12 equipment, and established a clear incident command management decision making plan for
13 various types of incidents? If not, why not?

14 What are the "best policing practices" in preparing for similar [REDACTED]
15 situations? [REDACTED]

16 [REDACTED] Is BPD fully ready to respond to the next major incident? Does
17 BPD have deficiencies compared to best [REDACTED] practices, and [REDACTED] when will they be
18 addressed?

19 [REDACTED]

20

21 **CONCLUSION**

22 The PRC wishes to recognize the candor of the self-examination that the BPD undertook
23 in its review of the events of December. This posture on the part of BPD is critical, and gives us
24 great faith that we will be able to learn from the mistakes in December. However, it is clear from
25 PRC's independent review as well as BPD's report that the BPD was not in a full state of
26 readiness to adequately respond on December 6, and accordingly that certain BPD policies,
27 practices, tactics and operational procedures need to be revised. It is critical that this review
28 and the necessary corrections be implemented in a timely fashion. Toward that end, we urge
29 the council to establish [REDACTED] these issues [REDACTED] to [REDACTED]
30 addressed by the Department.

1 **Discussion section**

2 by George Lippman

3
4 **Overview**

5 In reviewing the events of December 6, certain overarching themes became apparent as
6 problem areas in the police response. These themes inform our recommendations, but we
7 believe they should also be discussed and considered in a larger context of understanding how
8 and where things went wrong in terms of the police response on December 6. The police
9 response to the events on December 6 was deeply troubling. The PRC does not question that
10 there were elements of the crowd that engaged in dangerous and disruptive conduct. However,
11 the tactics employed by the police - including what appear to us to be the excessive use of less
12 lethal force, including baton strikes and CS gas - did little to de-escalate the crowd, and arguably
13 antagonized members of the community who had been demonstrating peacefully.

14 The PRC also notes that many of the problems experienced by BPD on December 6
15 could have been anticipated and prevented by far earlier, timelier preparation by BPD. We
16 believe that the incidences that arose on December 6 shed some light on the need for more
17 proactive thinking on the part of BPD command staff. We live in a sophisticated, diverse urban
18 environment. Many types of civil unrest or social or political actions can occur at any time.
19 Street protests can be expected in Berkeley. We expect our police department to be trained,
20 equipped and managed astutely and effectively, using best practices to deal with these situations
21 as safely as possible for officers, protesters and the community at large.

22 Based on our review it is clear that the BPD needs to reevaluate its tactics and policies in
23 the following arenas:

24 **Crowd management:** specifically de-escalation tactics.

25 The BPD's approach on December 6, 2014, focused too heavily from the start on crowd
26 control, when the emphasis should have been on crowd management. The crowd control posture
27 resulted from an assumption that the protesters were largely motivated by those promoting an
28 "FTP" event and associated with violent action. To the contrary, while the focus of the protests
29 was on the actions of police across the country, the vast majority of protesters ~~intended to~~
30 ~~are~~ conducted themselves in a peaceful mannerly. It is imperative that BPD continue to
develop tools and techniques to assist officers in navigating complex and confusing crowd

1 ~~situations which~~situations that may have mixed elements of legal and illegal, peaceful and
2 violent behavior.

3 The City considers non-violent demonstrations of concern about community issues to be
4 positive and healthy activities. Therefore, the City should interact with such demonstrations
5 primarily as events to be facilitated, rather than as threats to public safety. Facilitation of free
6 expression, de-escalation of tension, and peaceful resolution of conflict are primary goals of
7 police interaction with crowds. To advance and make meaningful its goal of protecting First
8 Amendment rights of freedom of speech and assembly,¹ police must win the trust of the
9 assembly that they can demonstrate in safety. Heavily armed, massed police using crowd control
10 tactics may inflame an assembly and incite rather than prevent violent clashes. They can
11 intimidate peaceful demonstrators and promote alienation and confrontation. [cite to study if
12 available now.] Retired San Francisco police chief Tony Ribera, in a newspaper interview, "said
13 law enforcement agencies are usually most successful at handling demonstrations when they
14 approach with a non-confrontational stance and ramp up when necessary. 'It's hard to have a
15 confrontational situation, then pull back from that.'"² The need for sufficient police resources
16 must also be balanced against the chilling effect of a large and visible police presence.³

17 That some members of a crowd engage in violence or destruction of property should not
18 be allowed to taint the entire demonstration. BPD should develop and employ tactics that protect
19 the freedom of expression of the peaceful demonstrators, as well as their physical safety. The
20 PRC believes that the use of kettling, gassing, and running the demonstrators on December 6
21 were counterproductive and antagonistic to the peaceful demonstrators. Moreover, BPD must
22 develop tactics to allow them to work with the vast majority of the demonstrators who are
23 peaceful, in order to contain and isolate the minority who are engaging in violence and
24 vandalism.

25 **Less Lethal Force:** How to create more accountability in the use of less lethal munitions, and
26 establish clearer guidelines for use of less lethal force in crowd control including but not limited
27 to CS gas, baton strikes and firing of ~~bean bag~~projectile rounds.

30

¹ BPD General Order C-64, para. 22.

² See: <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. (Aug. 22, 2014.)

³ OPD Crowd Control policy, Sec. III.C.2, p. 4.

1 BPD staff told the PRC that they were unable to report how much CS gas or other less-
2 lethal munitions they or mutual aid responders used. However, it can be discerned from other
3 BPD materials that a significant amount of less-lethal ordnance was expended on December 6.
4 The inability of the BPD to account for how much CS gas and other less-lethal munitions were
5 used is troubling. ~~The While the~~ PRC agrees with the BPD that accountability for the
6 deployment and use of less-lethal munitions should be improved. ~~The PRC would also like~~
7 needs to see an accounting by mutual aid responders. (staff)

8 The available anecdotal information suggests that a large quantity of CS gas was used on
9 December 6. A December 7 BPD email states that "Last night's rioting consumed the vast
10 majority" of their on-hand supply of CS gas and 40 mm less lethal ammo, and requests that
11 departments supply "as much as you are willing to loan us."⁴ The Hayward police reported that a
12 count of their specialty impact munitions and chemical agents revealed a need to restock
13 inventory.⁵ (GL) One Alameda police officer reported shooting ~~10~~ ten muzzle blasts of CS gas
14 and throwing one CS canister, while another deployed five CS canisters; six other officers
15 deployed one CS canister each.⁶

16 The PRC finds ~~is concerned~~ that the use of CS gas on December 6 was excessive.
17 Additionally, ~~given due to~~ the failures in the recording equipment, ~~it~~ is unclear what prompted
18 the decision to use CS gas at the specific times and locations, ~~and~~ how decisions were made to
19 continue to deploy CS gas, and whether the continued use was necessary. Given the existing
20 record, ~~the PRC is concerned that~~ the use of CS gas was arbitrary, and was not based on the
21 necessary understanding of the situation on the ground. ~~The PRC is concerned that~~ confusing
22 and conflicting orders by different ~~squads of law enforcement~~ squads made it impossible for
23 protesters to comply with orders at or ~~near~~ around the time CS gas was deployed, and this
24 confusion may have contributed to the apparent failure to disperse and to their agitation of
25 members of the crowd. Additionally, the deployment of CS gas in densely populated
26 neighborhoods poses a significant risk ~~to~~ not only to non-violent protestors, but also bystanders,
27 and the residents of the surrounding neighborhoods.⁷ ~~In addition to concerns about the quantity~~

28 ⁴ December 7, 2014 email from Lt. Frankel to undisclosed recipients.

29 ⁵ Hayward Police Department Special Response Unit, After Action Report -
30 SRU Operation # 14-14, page 7.

⁶ Alameda Police Report, various references.

⁷ Anonymous/Transgender person, PRC Meeting, December 10, 2014 (This Berkeley resident resides near Telegraph and Peoples Park and told the PRC

1 of gas that was used, ~~the~~ The PRC is concerned about also troubled by BPD's lack of attention to
2 ensuring failure to ensure that medical care was readily available for those exposed to the gas.

3 The PRC believes that Berkeley is out of step with its neighbors on the use of CS gas.
4 The San Francisco Police Dept. does not use tear gas (a colloquial term for CS).⁸ According to
5 the Oakland Crowd Control and Crowd Management Policy, "Chemical agents can produce
6 serious injuries or even death," and officers are to "use the minimum amount of chemical agent
7 needed to obtain compliance."⁹ Further, "The use of hand-thrown chemical agents or pyrotechnic
8 gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury
9 from shrapnel. Said devices shall be deployed to explode at a safe distance from the crowd . . ." ¹⁰

10 The PRC ~~is concerned~~ notes with concern that BPD's use of force policies do not includes
11 similar language, ~~which that would~~ addresses the significant concerns associated with the use of
12 these types of less-lethal munitions chemical agents.

13 The PRC considered whether to recommend a ban on the use of CS gas for crowd control
14 purposes, but a majority of Commissioners do not support such a ban. Most felt that the BPD
15 should be able to resort to CS gas in crowd management if needed. However, aAll
16 Commissioners feel felt strongly, however, that if CS gas is allowed, policies should be revised
17 to limit its use to narrowly prescribed circumstances. These limitations should include
18 requirements that BPD use the minimum amount of gas needed, and restrict its use where it may
19 affect non-violent protestors, bystanders, and residents of the surrounding neighborhoods.

20 Moreover, the Commissioners were unanimous in their opinion that if CS gas is to be deployed
21 to disperse a crowd, ~~then its possible impending~~ use should be made explicitly clear in a
22 dispersal order, and medical aid should be arranged ~~for~~ in advance of deployment.

23 BPD representatives told the PRC ~~indicating~~ that they were unable to report on how
24 much less-lethal projectile munition the department expended. ~~We do know~~ Our investigation
25 showed that officers fired one less-lethal foam baton round shortly after 6:30 pm on MLK Jr.

26
27
28 that tear gas went into the apartment via open windows and caused food,
dishes, and linens to be thrown out.)

29 ⁸ <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. Also, Capt. Theresa Gracie told the PRC Officer in a
30 May 13, 2015 phone conversation that SFPD has not used tear gas in the 20 years she has been with the department.

⁹ Oakland PD Crowd Control Policy, Sec. V.H.4.b. and V.H.4.c.
¹⁰ Oakland PD Crowd Control Policy, Sec. V.H.5.b.

1 Way near Addison Street. Another report around 11:15 pm states "Fred's Market, man shot w/
2 projectile BFD loaded w/ rig." The subject was transported to Alta Bates.¹¹ (GL) Hayward
3 police reported a need to restock their specialty impact munitions, but did not specify how much
4 was used.¹² (staff) No other information has been made available regarding the use of less-lethal
5 munitions.

6 Similarly to our concerns with the use of CS gas, the PRC ~~The PRC finds is concerned~~
7 that the use of less lethal munitions on December 6, as well as of CS gas, was excessive. ~~and It~~
8 is most unfortunate that the absence of a contemporaneous record makes it impossible to
9 ascertain what prompted the decision to deploy. ~~We are also concerned that Berkeley's policy~~
10 regarding the use of less lethal munitions in crowd control situations is not in keeping with best
11 practices, and need to be revised. Under Oakland policy, less-lethal munitions "shall not be used
12 for crowd management, crowd control or crowd dispersal during demonstrations or crowd
13 events,"¹³ and they "shall be used only against a specific individual who is engaging in conduct
14 that poses an immediate threat of loss of life or serious bodily injury to themselves, officers or
15 the general public when other means of arrest are unsafe and when the individual can be targeted
16 without endangering other crowd members or bystanders."¹⁴ Berkeley has no such restrictions.
17 The PRC is recommending a revision of BPD's policy on using less-lethal munitions, to
18 minimize the risk that innocent persons will be hit. (staff)

19
20
21 Finally, the PRC ~~believes recommends~~ that the After Action Report ~~should be~~ prepared in
22 a timely fashion, within 72 hours, and that each officer who uses force in a crowd management
23 situation should prepare an individual report detailing the force used, and explaining why that
24 level of force was necessary.

25 **Technology:** How to assure technology is both operable and responsive to the needs of
26 the mission.

27
28
29 ¹¹ Cites needed. CAD Report? Baton round mentioned in BPD report, p. 21
without a time given.

30 ¹² Hayward Police Dept. Special Response Unit After Action Report - SRU
Operation #14-14.

¹³ OPD Crowd Control Policy, Sec. VI.F.2.

¹⁴ OPD Crowd Control Policy

1 There were a number of technological failures that contributed to the problems in the
2 police response to December 6, and all of which evince a lack of foresight, testing and built in
3 redundancies. BPD did not adequately test the East Bay Regional Communication System
4 (EBRCS) for use in large-scale multijurisdictional actions. EBRCS is designed to have specific
5 radio channels to be used for multi-agency actions.¹⁵ However, some of the agencies' lines were
6 encrypted and others were not. The failure of EBRCS meant that BPD was not able to
7 communicate with the mutual aid responders.

8 Additionally, BPD also failed to either record or maintain any of the radio
9 communication from December 6 ~~between~~ within BPD itself. The loss of this contemporaneous
10 recording of the department's observations and actions has had a significant impact on the ability
11 to both reconstruct and test the recollections of those involved. No redundancies had been
12 established to maintain these communications in the event the system failed.

13 BPD's video capacities were also inadequate, with ~~batteries that did not charge, [G1]~~ and
14 cameras with that produced very poor quality images. The communication system available to
15 broadcast to the crowd was also inadequate, ~~and~~ which limited the efficacy of the crowd
16 dispersal orders.

17 **Mutual Aid:** How to increase accountability and better assure that conduct of responders
18 is in keeping with Berkeley's values and rules of engagement.

19 The role of mutual aid responders was an area of major concern for the PRC. The PRC
20 recognized that mutual aid responders are accountable to their own policies and procedures
21 regarding the use of force. However, ~~clearly more~~ clearly needs to be done to establish and
22 communicate the values of the City of Berkeley and the rules of engagement that BPD wishes
23 intends to follow, and to emphasize the focus on crowd management, and de-escalation. -The
24 PRC believes that establishing a policy of accounting for less lethals before and after the
25 incident, whenever practicable, will help increase accountability.

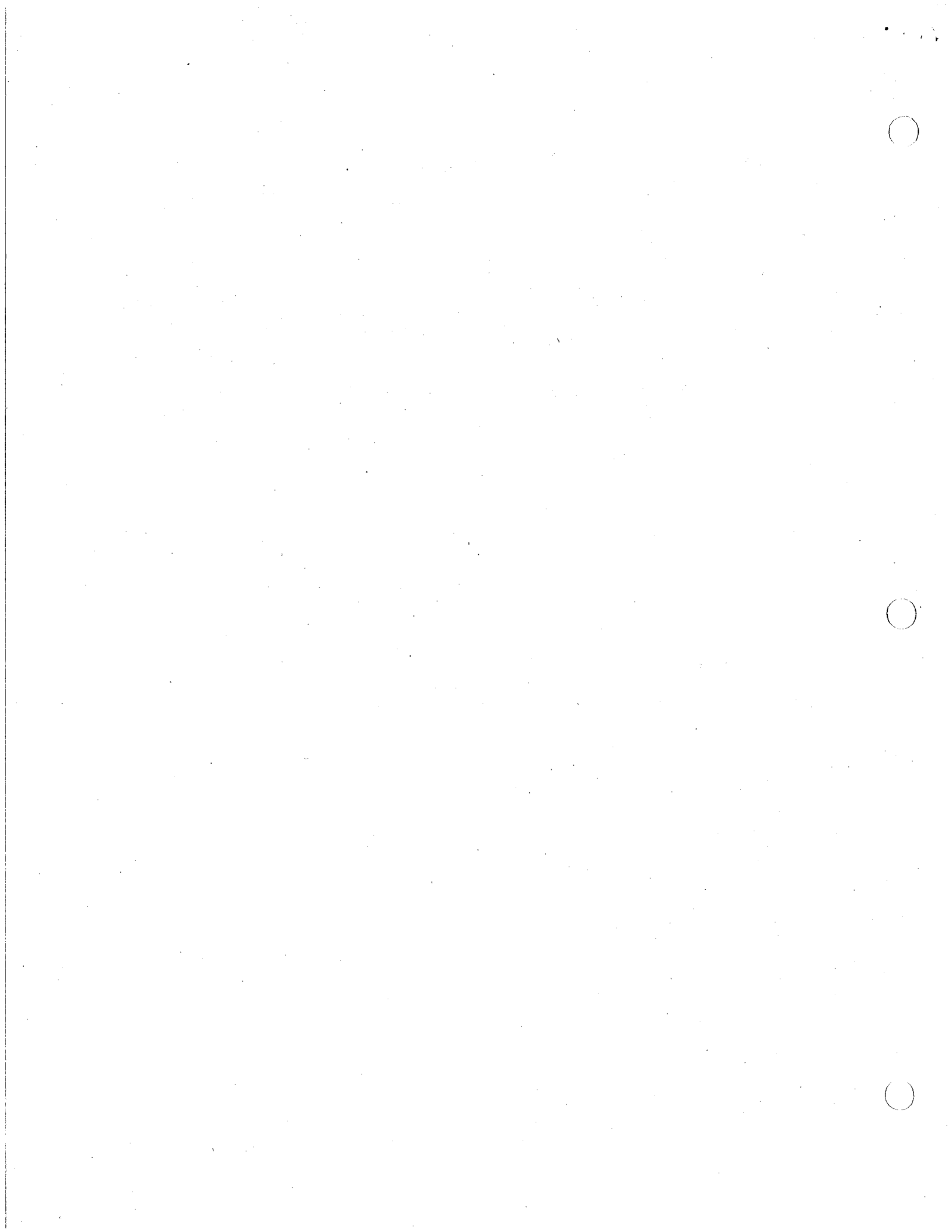
26 **Media:** How to avoid limitations on media access and better assure the safety of
27 ~~members of the media~~ journalists in escalating, crowd-control situations.

28
29
30

¹⁵ BPD Report, page 46, paragraph 4.

1 **CONCLUSION**

2 The PRC wishes to recognize the candor of the self-examination that the BPD undertook
3 in its review of the events of December. This posture on the part of BPD is critical, and gives us
4 great faith that we will be able to learn from the mistakes in December. However, it is clear
5 from PRC's independent review as well as BPD's report that the BPD was not in a full state of
6 readiness to adequately respond on December 6, and accordingly that certain BPD policies,
7 practices, tactics and operational procedures need to be revised. It is critical that this review and
8 the necessary corrections be implemented in a timely fashion. Toward that end, we urge the
9 council to establish benchmarks by which these issues are to ~~have been~~be addressed by the
10 Department.



PRC Commissioner votes on Recommendations

Recommendation #	Meeting date	Vote (tallies shown in this order: Ayes – Noes – Abstentions – Absent)
Preamble to Communication section	6-24	7-0-0-1 (GP)
1.	6-24	6-0-1 (GL) -1 (GP)
2.	6-24	6-0-1 (GL) -1 (GP)
3.	6-24	7-0-0-1 (GP)
4.	6-24	Consent (Absent: GP)
5.	6-24	6-0-1 (GL) -1 (GP)
6.	7-22	5-0-2 (GL, BVicente) - 1 (MS)
7.	7-22	PRC passed one recommendation for 6 & 7 combined
8.	7-15	5-0-1 (AR) - 2 (BB, MS)
9.	7-22	6-1 (GL) -0-0 (MS)
10.	7-22	PRC passed one recommendation for 9 & 10 combined
11.	7-22	6-0-1 (GL) -1 (MS)
12.	7-29	7-0-0-1 (MS)
13.	7-22	6-0-1(GL) -1 (MS)
14.	6-24	7-0-0-1 (GP)
15.	8-12	5-1 (TR) - 1 (AY) -1 (GP)
16.	7-22	7-0-0-1 (MS)
17.	7-29	7-0-0-1 (MS)
18.	7-29	7-0-0-1 (MS)
19.	8-12	6-0-1 (AY) -1 (GP)
20.	7-22	5-2 (BV, GL) - 0 -1 (MS)
21.	8-12	7-0-0-2 (GP, MS)
22.	9-9	7-0-1 (GL) -1 (BB)
23.	9-9	8-0-0-1 (BB)
24.	7-22	7-0-0-1 (MS)
25.	9-16	6-0-0-3 (BB, GL*, MS)

26.	9-16	6-0-0-3 (BB, GL*, MS)
27.	9-16	6-0-0-3 (BB, GL*, MS)
28.	9-16	Consent (Absent: BB, GL*, MS)
29.	10-8	7-0-0-2 (BB, AY)
30.	10-8	PRC passed one recommendation for 29 & 30 combined
31.	9-16	6-0-0-3 (BB, GL*, MS)
32.	9-16	6-0-0-3 (BB, GL*, MS)
Mutual aid	10-8	6-1 (GL) -0-2 (BB, AY)

* Paul Kealoha-Blake was temporarily appointed for the September 16 meeting for Commissioner Lippman.

7

Minority Report:
Berkeley Police Review Commission Investigation
December 6-7, 2014 Police Response to Black Lives Matter Protest

The undersigned PRC commissioners support the majority report, which is strong in many respects.

In a few particulars, the undersigned differ from the majority report. Below we state and explain our dissenting opinions.

Recommendations 18 and 22: CS gas

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...with the intent of putting substantial constraints on the use of CS gas in crowd control and crowd management.

>> The undersigned commissioners recommend: Prohibit CS gas in crowd control and crowd management:

Signed:

x

Recommendation #29: Media credentialing

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

PRC (10.8.15)

No policy should be implemented until the matter has been referred back to the PRC to establish a subcommittee to allow for a full discussion and formulation of a policy.

>> The undersigned commissioners recommend: 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.

Signed:

x

Recommendation #31: Video surveillance

BPD

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

PRC (9.16.15)

The PRC recognizes the need for the Department to make better-informed decisions in crowd control situations. Therefore, the department needs access to real time surveillance tools. Gathering such information will require some degree of surveillance, which raises concerns regarding citizens' privacy. We recommend that the Council make a determination of what, if any, surveillance tools should be considered for use, and then refer the matter to the PRC to obtain community input and work with the BPD to establish the appropriate guidelines for such use.

>> The undersigned commissioners recommend adding this sentence: "PRC should be asked to make a recommendation on any proposal for a surveillance tool before a decision is made to adopt the tool."

Signed:

x

Recommendation: Mutual Aid

PRC (10.8.15)

We believe it is critical for BPD to communicate to mutual aid responders the values of the COB, including de-escalation tactics, before and during a crowd event. BPD should continue to review its briefing and communication practices to make every effort for mutual aid responders with our policies. We request that the BPD make specific recommendations on strategies and procedures to achieve these goals.

>> The undersigned commissioners recommend: Abide by state law, section 8618 of the Legislative 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."¹

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."²

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.³

The BPD is accountable for the actions of other departments participating in a mutual aid activity in Berkeley. Therefore, the department should account for what policing equipment is brought into Berkeley, in particular what type of less-lethal projectiles and chemical agents, and how many rounds are discharged by mutual aid participants, what type of strikes were delivered, and how many civilian injuries were reported.

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.

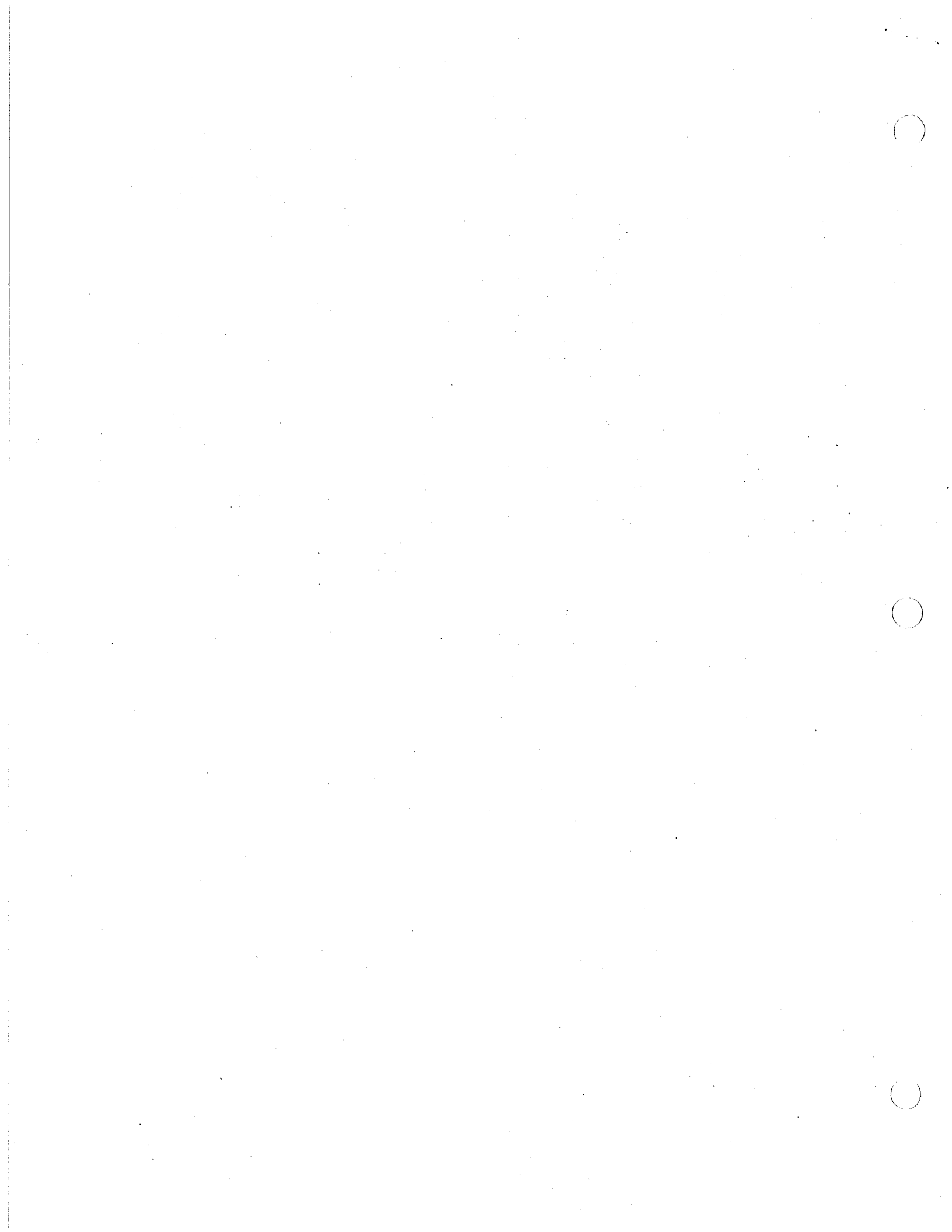
Signed:

x

¹ <http://codes.lp.findlaw.com/cacode/GOV/1/2/d1/7/11/s8618>

² <http://www.caloes.ca.gov/LawEnforcementSite/Documents/1Blue%20Book.pdf>

³ “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.” <http://www.berkeleyside.com/wp-content/uploads/2015/02/2003-09-09-Item-54-57.pdf>



To: PRC

From: Terry Roberts

Oct. 20, 2015

Re: Narrative for possible minority opinion report. I would want to include this in the PRC report as a minority opinion if the narrative and recommendation (or something close to them) I submitted on Oct 19 are not approved by the PRC for inclusion in the PRC's report.

Minority Opinion Report by Commissioner Terry Roberts

The PRC's report overall is very well done and brings together a diversity and quality of perspectives and ideas. I support it. But there is one key point missing in my opinion. The PRC has chosen not to include a recommendation for a further report from BPD to address bigger picture problems that could result from BPD's lack of preparedness to respond on December 6&7. I believe this is shortsighted and that the Council should consider such a follow-up report.

Overview

It is clear that BPD was unprepared to adequately respond to protests on December 6&7. The PRC has mostly focused on responding to BPD's report and recommendations, which is what the council ask us to do. But so far BPD's responses have been in the context of what they could have done better, not in the context of what is called for if using "best policing practices". Nor has BPD's lack of preparedness been evaluated as to the possible future risks on its broader policing responsibilities.

Therefore, given this lack of BPD's readiness to respond on Dec 6&7, I think the PRC was shortsighted in not raising questions and addressing the broader implications of BPD's overall state of preparedness for future responses to not only similar, mostly nonviolent situations, but also more complex and threatening public safety situations, in the context of "best policing practices".

These more complex and threatening situations could include: public protests that are more violent in nature; shooters in schools, theaters, among protesters, or at large public gatherings in public places; coordinated terrorist-type activities; or hostage situations, etc.)

It is important that bigger picture questions be raised about whether some of the problems experienced could have been anticipated and prevented by far earlier, timelier preparation by BPD, and calls into question how any further lack of preparedness might impact BPD responses to other similar or more threatening situations in the future. Looking at these issues sheds light on how the department is managed and if it is thinking, planning, and preparing proactively rather than reactively.

We live in a sophisticated, diverse, urban environment. Many types of civil unrest or social or political actions can occur at any time. Street protests can be expected in Berkeley. We expect our police department to be trained, equipped, and managed astutely

and effectively, using best policing practices to deal with these situations as safely as possible for officers, protestors and the community.

Proactive Training and Preparation

Several of BPD's December 6 & 7 report recommendations should fall under the category "why weren't these issues addressed sooner?" including but not limited to (in the order of BPD recommendations):

- #1....getting clarity on availability of regional radio inoperability...to improve communications with mutual aid partners...
- #2....use of social media
- #3....explore use of BPD negotiators for this type of crowd management
- #4....acquire high quality mobile public address system
- #6....make efforts to ensure mission clarity
- #14...explore technology to improve decision making
- #21...training re: disciplined use of baton strikes
- #22...warning to officers of impending chemical agent use
- #24...comply with existing policy regarding filing after action reports
- #26...ensure and increase the level of officer training
- #27...ensure that commanders attend training
- #32...investigate the use of body armor...to protect officers from projectiles

I believe that the training for, and implementation of, the BPD recommendations cited above (and possibly others) should be expected to occur in BPD's normal line of duty, well in advance of any incidents because the need for training and equipment, for example, can be readily indentified and anticipated early, and are clearly needed to prepare the department and its officers for a variety of possible incidents. But these actions were not adequately planned for or taken in advance of December 6&7.

While BPD has a vital and difficult job and has served the community very well in most instances, all departments have room for improvement. Expecting BPD to implement the kinds of changes and strategies noted above very early as part of best practices is critical to successful outcomes. Being proactive rather than reactive should be a high priority BPD strategy. What should be done to ensure that this foresight and preparation happens in the future so that BPD is fully supported in its efforts, but in the end is held accountable for its actions resulting from inadequate planning and preparation?

Best Policing Practices

What are the "best policing practices" in preparing for and managing similar or more threatening situations? Best practices were not referenced or used for evaluation in BPD's report regarding its response strategies, tactics, and level of preparedness. Is BPD fully ready to respond to the next major incident? Does BPD have deficiencies compared to best policing practices, and if so when will they be addressed?

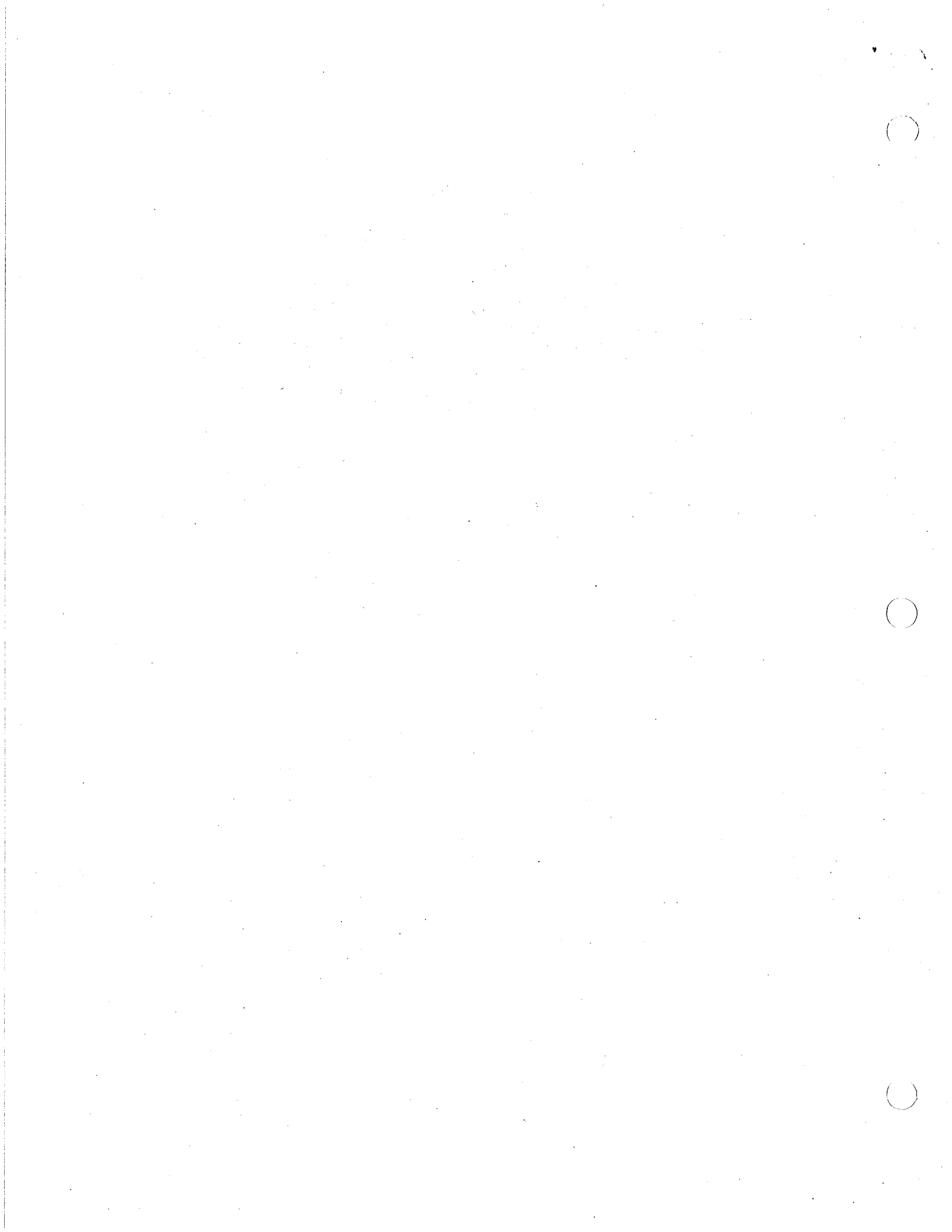
A further report from BPD is needed to address these issues.

Recommendation

Therefore, I recommend that the Council also include the following recommendation in its actions regarding overall BPD readiness to respond to major protests, civil unrest, and other possible major community emergencies using best policing practices:

That the Council direct BPD to submit a report on its state of readiness to respond to, and effectively manage, key emergency situations by comparing BPD's state of readiness to "best policing practices" including but not limited to training, equipment, organizational structure and sufficiency, management and mission clarity, mutual aid coordination, and related policies, procedures, and tactics. Since these incidents can happen at any time, the report is urgent. Therefore, BPD should return to the Council within 30 days with a recommended schedule for Council consideration of this report.

Terry Roberts
PRC Commissioner



Osha Neumann
Attorney at Law
1840 Woolsey St.
Berkeley, CA 94703
510-644-2429

Date: October 21, 2015

To: Berkeley Police Review Commission

I write in response to the PRC's recent conclusion that "state law and existing mutual aid pacts require each agency to follow its own policies re use of force....therefore the BPD cannot enforce its use-of-force policies on mutual aid responders."

At a minimum, the latter statement is incorrect. California Govt. Code § 8618 provides that 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.¹ See also the California Master Mutual Aid Agreement.²

Therefore, host agencies have not only the right, but also the responsibility to supervise the performance of invited agencies.

Moreover, if BPD requests mutual aid and its failure to adequately supervise and control the assisting agencies leads to injuries and violations of constitutional rights the City of Berkeley and its commanders may be held liable under federal law.³

It is also not clear that state law requires each agency to follow its own use of force policies in a mutual aid situation. The citation given for this claim refers not to state law but to a policy manual, the Law Enforcement Guide for Emergency Operations, under a section titled "Administrative Guidelines." The Guide shows no citation to state law.

The mandate that the host agency supervises the performance of invited agencies explicitly extends to the direction of personnel and equipment. This state law provides the basis for the instruction in the California Law Enforcement Mutual Aid Plan that the jurisdiction requesting mutual aid is responsible for among other things "advising responders what equipment they should bring."⁴

Finally, under the above-cited state law, the 1992 mandate passed by the Berkeley City Council is legally valid and should be considered governing in Berkeley's participation in mutual aid. It mandates 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.”⁵

I urge the PRC and the City Council to uphold California and Berkeley law on mutual aid. BPD has a right and also a civic and moral responsibility to local residents, to ensure policing be conducted according to local community standards.

Sincerely yours,


Osha Neumann, Esq.

¹ <http://www.lawlink.com/research/Level2/50475>

² <http://www.caloes.ca.gov/PlanningPreparednessSite/Documents/CAMasterMutAidAgreement.pdf>

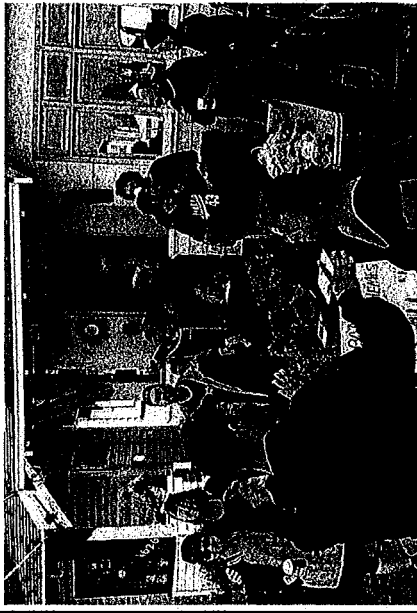
³ Pursuant to *Monell v. N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978) (See, e.g., *Jennings v. City of Miami*, 2009 U.S. Dist. LEXIS 5430, 2009 WL 413110 (S.D.Fla. 2009) [*Monell* claim stated based on City's adoption and implementation of mutual aid agreements for policing of demonstrations during FTAA meetings] and basic principles of supervisory liability. As the Ninth Circuit has held, a “defendant may be held liable as a supervisor under § 1983 ‘if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.’” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989). “The requisite causal connection can be established . . . by setting in motion a series of acts by others,” . . . or by “knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury,” (*Dubner v. City & Cnty. of San Francisco*, 266 F.3d 959, 968 (9th Cir. 2001).) “A supervisor can be liable in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others.” (*Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998).)

⁴ “The agency requesting mutual aid is responsible for the following: 1. Identifying numbers and types of mutual aid resources requested. 2. Identifying specific missions for mutual aid responder tasking. 3. Advising responders what equipment they should bring. 4. Establishing an assembly area for responding resources. 5. Identifying communications channels compatible with command and control of field resources. 6. Designating a liaison officer to facilitate a coordinated assimilation of responding mutual aid resources. 7. Preparing a situation briefing including local maps for responders. 8. Providing logistical support such as food, lodging, rest intervals and equipment maintenance as appropriate, for mutual aid personnel.”


<http://www.caloes.ca.gov/LawEnforcementSite/Documents/1Blue%20Book.pdf>

⁵ <http://www.berkeleyside.com/wp-content/uploads/2015/02/2003-09-09-Item-54-57.pdf>

Ongoing Actions & Events



Foreclosure home defense is a 24/7 operation. Anyone can sign up for a shift—all you have to do is be willing to keep the door locked if evictors or bank representatives come calling, while you call for backup. To sign up for a shift, email foreclosure@occupyoakland.org. Occupy Oakland Foreclosure Defense meets every Sunday afternoon at 12:30 at 19th and Telegraph in Oakland. (Rain location: San Francisco Pizza at 15th and Broadway, also in Oakland.)

We have postponed our free movies every Thursday night at our "DIY Drive-In" in due to cold weather. Stay tuned though and come on by for a movie, free popcorn and hot cider, and a chance to meet your neighbors. 

Did You Know...

ing borrowers — are behind on their payments. Just after Christmas 2012, the Los Angeles Police Department finally defeated the four-month occupation of "Fort Hernandez" (the home of Ulises Hernandez and his family). To get to this "victory," they employed over 100 police officers and several armored

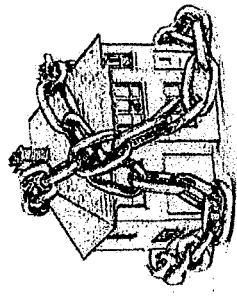
As the sixth year of the foreclosure crisis (can it really be a "crisis" after six years? Is it maybe in some people's best interest to keep it going?) comes to an end, over 15 million homes have been taken from their owners by foreclosure. Another 5.3 million homeowners — about 11 percent of all remain-

continued on pg. 2

In the Last Week

Thanks to Occupy Oakland Foreclosure Defense, Jodie Ramdolph and her possessions are still in her Foley Street home, just behind the Park Street Marketplace parking lot.

Since lawyers have failed her, Jodie is fighting back the people's way. On Day 71 of the home defense, she met with Morgan Stanley at the negotiating table! They must be short on their own lawyers, because they flew a lawyer up from Southern California



for the meeting. Her proposal has been received and is being reviewed. We'll let you know what they say ... and what Jodie wants to do about it. We won't leave until Jodie's home is hers again.

Jodie has been fighting to stay in her home for years. Morgan Stanley, and a raft of affiliated shadow companies, shuttled the loan around from one subsidiary to the other until they foreclosed

continued on pg. 2


In the Last Week

continued from pg. 1

on her. Morgan Stanley's tactics have included:

- Pushing her into a predatory refinance
- Moving her loan around from company to company so she couldn't get a fix on who to negotiate with
- Removing the lawyer for their side who was actually negotiating with Jodie when they were close to reaching a mutually acceptable plan; and
- Stuningly, breaking in and changing the locks to her house

WHILE SHE WAS AT A CHEMOTHERAPY SESSION

We'll report on how the first negotiating meeting goes as soon as it actually happens—and if the bank postpones it again, we'll report that first. 



Defenders create posters during a shift.

FORECLOSURE FREE ZONE


PROTECTING OUR COMMUNITIES FROM ECONOMIC ATTACK

Did You Know...

continued from pg. 1

During the housing boom, Spain's banks offered 100% mortgages. Now, while receiving millions in public aid, they are throwing people out of their homes. But Pamplona's locksmiths have declared they will not participate in foreclosure eviction actions.

Congress gave a one-year reprieve to underwater homeowners this week by waiving taxes on forgiven mortgage debt as part of its "fiscal cliff" deal. Now real estate agents and homeowners are looking for California to follow suit.

One of our defenders, Gigi, a 30 year pensioned member of the International Brotherhood of Electric Workers union, has been trying for 4 years to negotiate a restructuring of her predatory mortgage from Chevy Chase Bank. It jumped from \$1300 to \$4700 a month. She faces possible eviction in February. 

The California Homeowner's Bill of Rights came into effect. It's too late to help Jodie, but it might help you or someone you know. Just Google "CA Homeowner Bill of Rights" to learn more.



http://eeas.europa.eu/delegations/myanmar/press_corner/all_news/news/2014/20140220_en.htm

"Both in the classroom and on the training ground the EU training team constantly underpins the tactics being taught with the principles of de-escalation, "negotiate first", and the obligation to avoid the use of force wherever possible.

https://books.google.com/books?id=XaZWeZmFbNIC&pg=PA46&lpg=PA46&dq=european+police+de-escalation+techniques&source=bl&ots=1M_uhcQUVY&sig=opqXBUYac8_DXXqX3gTbIqTLRao&hl=en&sa=X&ved=0CFUQ6AEwCGoVChMIIsqDezJfSyAIVD8xjCh3h0AVz#v=onepage&q=european%20police%20de-escalation%20techniques&f=false

A further indication of advances in police practices in the UK was the recommendation that de-escalation techniques be part of police training, along with the implementation of mental health first aid training.

<https://hal.archives-ouvertes.fr/hal-00535460/document>

...the German police have issued very strict and extensive regulations concerning the use of means of physical coercion. In addition, intensive training is available, which deals with the handling of conflicts, reduction of force and de-escalation techniques...

The use of a gun by a police officer is a very rare event in Germany. During the past few years, in about 4,000 cases every year a handgun is used by a police officer. In 50 to 70 cases, the handgun is used against people, but in most cases the gun is used to shoot at dangerous or wounded animals. During an average year between three and ten people are killed and some 30 are wounded by police guns in Germany.

<http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/>

American police officers are among the best-trained in the world, but what they're trained to do is part of the problem... Police training starts in the academy, where the concept of officer safety is so heavily emphasized that it takes on almost religious significance... officers are taught that the risks of mistake are less-far less-than the risks of hesitation... officers see what they are afraid of. They see what they are trained to see. That's the problem.

Berkeley Municipal Code

2.04.170 Approval--Public hearing required.

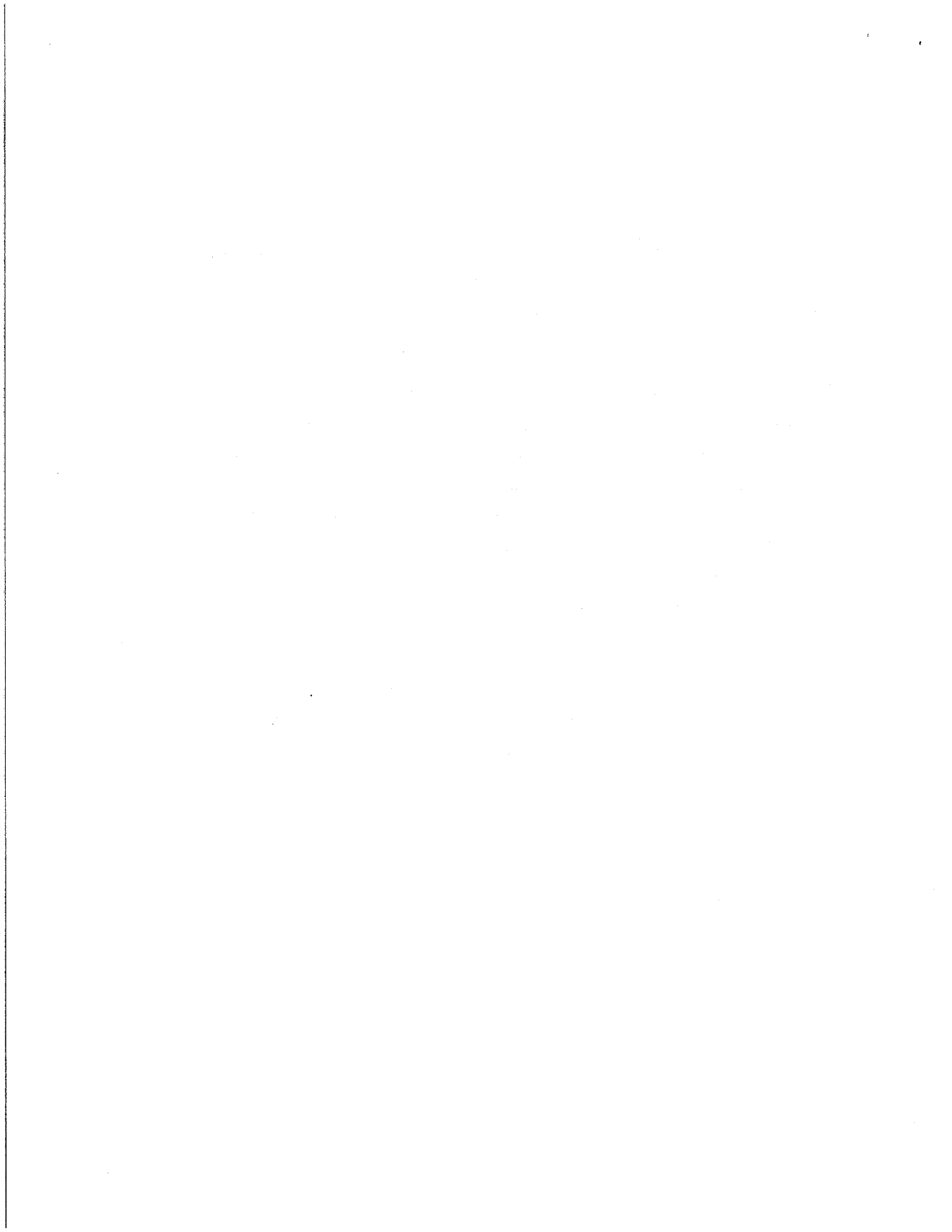
After April 17, 1973, no such agreement, understanding or policy shall be valid or effective unless specifically approved by the City Council following public hearings on the same as hereinafter provided. All terms and conditions of such agreements, understanding or policies shall be reduced to writing and presented to the City Council for approval by the Berkeley Police Department or appropriate City official, accompanied by a statement of the rationale therefor, projections of the costs of implementation, and other information or explanations requested by the council. (Ord. 4640-NS § 3, 1973)

2.04.180 Public hearing--Documents and procedures required.

At least ten days before the public hearing required by Section 2.04.170, copies of all agreements, understandings or policies to be presented, together with supporting statements and documents, shall be made available to the public in the office of the City Clerk. The public hearing shall afford opportunity for interested members of the public to offer their views and opinions on the agreements, understandings or policies proposed for approval. It shall be the duty of the head of the Police Department to attend such hearings for the purpose of responding to council inquiries and providing such additional information relating to the agreements, understandings or policies as may be requested by the council members. (Ord. 4640-NS § 4, 1973)

2.04.190 Period of validity--Renewal.

No such agreement, understanding or policy shall be valid or effective for more than one year following City Council approval, but each may be renewed or extended following the disclosure, public hearing and documentation procedures provided for in Sections 2.04.170 and 2.04.180 of this article. (Ord. 4640-NS § 5, 1973)



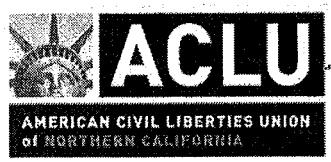
Adopted 10/28/14

W/ Reso No. 66,836-
P.S.

CITY COUNCIL REVIEW/APPROVAL BINDER

BERKELEY POLICE DEPARTMENT AGREEMENTS, LETTERS AND UNDERSTANDINGS RE MUTUAL AID, INFORMATION SHARING AND COOPERATION WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND PRIVATE SECURITY ORGANIZATIONS (Berkeley Municipal Code §2.04)

Item #	3.6
Title:	FEDERAL: DEPARTMENT OF HOMELAND SECURITY, URBAN AREA SECURITY INITIATIVE (UASI) PROGRAM
Type:	Written Agreement
Approvals:	Initial: April 10, 2010 / Current: October 15, 2013
Summary:	<p>The Department of Homeland Security manages the UASI Program a grant funds program supported via the Federal Emergency Management Agency (FEMA). The funds are provided to state and local agencies to support development and implementation of homeland security-related operations/activities.</p> <p>The Police Department has in force grant agreements that support annual regional preparedness training programs and emergency response equipment acquisitions.</p>
Rationale:	The Police Department's relationship with the regional affiliate (Bay Area UASI) of this Federal agency promotes public safety and serves the law enforcement mission. It facilitates local and regional preparedness and responses to disasters and acts of violence.
Cost:	<p><i>If Approved:</i> Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.</p> <p><i>If Not Approved:</i> Effect on cost cannot be calculated. Absence of interaction would prevent the investigation of certain crimes, inhibit multi-agency/regional mutual aid activities, and increase hazard to public safety amid responses to high-risk incidents. Reduced cooperation would have similar adverse effects on investigation outcomes and public safety. The net effect would be added burden of enforcement and related activity upon the Police Department, costs for which would be borne locally.</p>
Recommendation:	Continued Approval
Implementation:	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.



Home » Blog » Suspicious Activity Reports Go to Court

Suspicious Activity Reports Go to Court

January 9, 2015

Issues: [Free Speech](#), [Privacy and Government Surveillance](#)

By: Nasrina Bargzie follow @ACLU_NorCal

Yesterday a federal judge in the Northern District of California held a hearing to determine whether our [lawsuit](#) challenging the U.S. government's domestic surveillance program called Suspicious Activity Reporting could proceed.

The American Civil Liberties Union and Asian Law Caucus are representing five men who have each been the subject of Suspicious Activity Reports (SARs). Because they engaged in innocuous activities (Tariq was at a train station with his mother, Wiley was playing video games, Khaled was buying computers) and constitutionally protected artistic activities (James was taking pictures of public art, Aaron was taking a picture of a refinery), police and security officers reported our clients as suspicious, and the reports were uploaded to a national SAR database that branded them as potential terrorists to thousands of law enforcement agencies across the country.



What does it mean to have a SAR?

Well it means that someone has determined that your activities have a potential nexus to terrorism, a very weighty label to have in this day and age.

And our clients are not alone. While the nature of most SARs is unknown since they are hidden from the public, the ACLU obtained 1,700 SARs in response to a Public Record Act request from [Central California](#) showing broad-based documentation of innocuous and constitutionally protected activities.

Unsurprisingly, when federal agencies encourage people to file SARs if they see "suspicious" behavior, many of the reports will be based on subjective biases rather than solid training or reasonable suspicion of criminal activity. Consequently, the SAR reports suggested over-reporting on communities of color, in particular Arab, Middle Eastern, Muslim and South Asian communities, who were engaged in innocent conduct.

Our clients brought this lawsuit because they have been personally harmed by a surveillance program that has branded them as potential terrorists—and because they believe the government should not be keepir dossiers on innocent Americans. Fortunately, a federal rule requires law enforcement agencies not to maintain records in criminal intelligence databases unless they have reasonable suspicion of criminal activity.

Our lawsuit argues that the government must apply that modest, but important, limitation to the SAR program in order to protect Americans' privacy. In the age of Snowden, the government disagrees. Our lawsuit also argues that, at the very least, the government should have given the public an opportunity to submit formal comments about SARs before creating the program, since it affects the rights and

obligations of people. The government contests this assertion, relying, in essence, on the position that it doesn't affect your rights to be labeled as a potential terrorist in federal databases accessible by your local police and thousands of others around the country.

Yesterday the court held argument on whether Tariq, Wiley, Khaled, James and Aaron's complaint could move forward, or whether it should be dismissed at the government's request.

The outcome rests on a question of utmost importance to our society: should the government collect and maintain records linking innocent Americans to terrorism in violation of its own rules, without any accountability? Or should the government's actions be held to the yardstick of the law?

Nasrina Bargzie is a Senior Staff Attorney for National Security & Civil Rights at Asian Americans Advancing Justice-Asian Law Caucus.

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Federal Court: Yes, We Can! ACLU Challenge to "See Something, Say Something" Surveillance Program to Go Forward

February 23, 2015

Issues: [Free Speech](#), [Privacy and Government Surveillance](#), [Racial Justice](#)

By: Julia Harumi Mass follow @MassJulia

On Friday, federal district court Judge Richard Seeborg denied a government motion to dismiss our case challenging the government's Suspicious Activities Reporting program, *Gill v. Department of Justice*. As we've written [before](#), this program relies on local law enforcement, security guards, shopkeepers, and neighbors to report any "suspicious activities" they observe. FBI Director James Comey [instructed](#) last year, "When the hair on the back of your neck stands, listen to that instinct and just tell somebody."

Those suspicious activity reports (or SARs, for short) are stockpiled in a giant database and shared with state, local, and federal government agencies throughout the country. The problem is that, contrary to a binding federal regulation, the government doesn't require even reasonable suspicion of criminal activity for a SAR to be maintained and shared.

All of us have fears and worries and none are immune from [unconscious bias](#). We discovered that when local law enforcement officers, security guards, shopkeepers and neighbors report people who seem "suspicious," there is an overrepresentation of the innocent activities of Arab and Muslim community members. We believe that three of our clients were targeted because of racial or religious bias. (The other two are [photographers](#); the SAR reporting standards target photography of "infrastructure" like bridges and dams as "suspicious," even though it's constitutionally protected.)

Friday's ruling is a step forward toward transparency and accountability.

Overbroad government surveillance programs have been difficult to challenge because their secrecy meant affected people couldn't show that their conversations had [actually been monitored](#), or their [data gathered](#). The government has convinced judges to dismiss cases where the injuries are too speculative, and it's been interesting to note [the revelations](#) later confirming the problems the lawsuits sought to address. This time, we represent clients who were confronted by law enforcement and/or know that SARs were uploaded to a counterterrorism database based on their entirely lawful activity. In his order on Friday, the court recognized both that the federal SAR program "alters the legal regime" that local law enforcement works under and that being in a counterterrorism database injures our clients' "privacy and reputational interests."

We are eager to move the [case](#) forward and end the use of SAR standards that encourage racial and religious profiling, target First Amendment-protected activity, and violate federal law.

