

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
SPECIAL MEETING
AGENDA**

**October 21, 2015
6:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL

2. APPROVAL OF AGENDA

3. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)

4. APPROVAL OF MINUTES

Special meeting of October 8, 2015.

5. CHIEF OF POLICE'S REPORT

Budget, staffing, training updates, and other items.

6. OLD BUSINESS (discussion and action)

a.. Consider the Mutual Aid Subcommittee's recommendation that the PRC urge the Council to end participation in the Urban Shield exercise funded under the Urban Area Security Initiative (UASI) program.

b. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.

i) Discuss and approve "Discussion" section of report.

ii) Discuss and approve any remaining aspects of report.

iii) Authorize the Chairperson to represent the PRC before the City Council when the investigative report is presented.

7. NEW BUSINESS (discussion and action)

Authorize the Chairperson to represent the PRC before the City Council when amendments to BPD General Order N-17, Suspicious Activity Reporting, are considered (currently on the October 27, 2015 agenda.)

8. CHAIR'S REPORT

9. PRC OFFICER'S REPORT

Status of complaints; announcements.

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

11. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)

12. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.

 Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 3rd floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

COMMUNICATIONS FOR PRC SPECIAL MEETING October 21, 2015

MINUTES

October 8, 2015 Special Meeting

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COMMUNICATIONS

Communications #4400 – Draft Title Page, Preface, Introduction, and Findings of PRC Report (through Oct. 14 meeting).

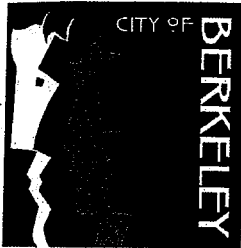
Page 9

Communications #4400 – Draft Discussion Section of PRC Report (through Oct. 14 meeting).

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Communications #2301 – November 7, 2015 Community Forum on Racial Justice.

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Police Review Commission (PRC)

POLICE REVIEW COMMISSION
SPECIAL MEETING
MINUTES
(unapproved)

October 8, 2015
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 7:05 P.M.

Present: Commissioner Alison Bernstein (Chair)
Commissioner Jerry Javier
Commissioner George Lippman
Commissioner George Perezvelez (Vice Chair)
Commissioner Terry Roberts
Commissioner Ann Rogers
Commissioner Michael Sherman

Absent: Commissioners Benjamin Bartlett, Ari Yampolsky

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Dave Frankel, Lt. Dan Montgomery (both left 8:35 p.m.), Ofc. David Bartalini

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were three speakers.

4. APPROVAL OF MINUTES

The Regular meeting minutes of September 9, 2015 were approved by general consent.

The Special meeting minutes of September 16, 2015 were approved by general consent.

5. CHIEF OF POLICE'S REPORT

Capt. Frankel reported the arrest of the man who hit another man on the head with a hammer in front of Radio Shack on December 6, 2014. Also, on the City's Open Data portal, the BPD has posted stop data on high-risk car stops, pedestrian stops and bicycle stops from Jan. 6 – Aug. 26, 2015. [PRC Officer's note: access the information at <https://data.cityofberkeley.info/>]

6. OLD BUSINESS (discussion and action)

a. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.

i) Continue review and approval of or changes to BPD recommendations in its report of the December 6 & 7, 2014 events.

Motion that the PRC adopt the following in response to BPD's Recommendations #29 and #30: This is a complicated issue that requires input from all stakeholders. It is the PRC's position that 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.

Moved/Seconded (Rogers/Perezvelez) **Motion Carried**

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Rogers, and Sherman.

Noes: None

Abstain: None

Absent: Bartlett, Yampolsky

Motion that the PRC adopt the following recommendation regarding the use of mutual aid: The conduct of mutual aid responders in their crowd control roles during the events of December 6 was a primary concern that the PRC heard from the public. The PRC believes that state law and existing mutual aid pacts require each agency to follow its own policies re use of force. We therefore believe that the BPD cannot enforce its use-of-force policies on mutual aid responders. 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.

Moved/Seconded (Perezvelez/Roberts)

Friendly amendment to add, at the end: We request that the BPD make specific recommendations on strategies and procedures to achieve these goals.

(Moved by Roberts; Accepted by Perezvelez)

Motion, as amended, Carried

Ayes: Bernstein, Javier, Perezvelez, Roberts, Rogers, and Sherman.

Noes: Lippman

Abstain: None

Absent: Bartlett, Yampolsky

- ii) Review and approve findings.

By general consent, the Commission approved the following changes to the Findings section:

- Added the two footnotes suggested by staff.
- Deleted certain language in paragraph 20, p. 6.

By general consent, the Commission approved the Findings section with the above changes.

- iii) Discuss remainder of report, including discussion section, and its structure.

By general consent, consideration of the Introduction and Discussion sections was postponed to the next meeting.

7. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

a. Mutual Aid Pacts Subcommittee

- i) Report to full commission with recommendations on Berkeley Police Department's 2015 Mutual Aid Pact Agreements.

Motion to recommend to the City Council that it approve the four new or amended Mutual Aid Pacts with these entities: Alameda County District Attorney's Office Violence Against Women/Domestic Violence Project; Alameda County District Attorney's Office; A Safe Place; and University of California, Berkeley, Police Department.

Moved/Seconded (Perezvelez/Sherman) Motion Carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Rogers, and Sherman.

Noes: None **Abstain:** None **Absent:** Bartlett, Yampolsky

Motion that the Commission adopt the Subcommittee's recommendation that the City Council not approve the Mutual Aid Pact with the Northern California Regional Intelligence Center (NCRIC) until the Council and the PRC have had an opportunity to review the Suspicious Activity Reports.

Moved/Seconded (Lippman/Sherman) Motion Carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Rogers, and Sherman.

Noes: None **Abstain:** None **Absent:** Bartlett, Yampolsky

By general consent, the Commission agreed to postpone until the next meeting its vote on the Subcommittee's recommendation to urge the City Council to end BPD's participation in the Urban Shield activity (funded under the agreement with UASI (Urban Area Security Initiative)); in the meantime, individual Commissioners are to conduct their own research into the benefits and drawbacks of the Urban Shield exercise, and PRC Officer to inquire with Capt. Harris as what impact

on the BPD, if any, ceasing to send BPD officers to Urban Shield would have.

ii) Discussion regarding obtaining SARS reports.

Not discussed.

iii) Consider dissolution of subcommittee or schedule next meeting date.

By general consent, the Mutual Aid Pacts Subcommittee was dissolved.

8. NEW BUSINESS (discussion and action)

a. Commissioner's questions regarding BPD's Mid-Year Crime Report.

By general consent, the Commissioners agreed to ask the BPD questions about the mid-year crime report at the November PRC meeting; PRC Officer to forward Commissioners' questions to BPD before then.

b. Proposal to co-host with the Personnel Board and the BPD a community-wide anti-bias training.

Motion to co-host this training and ask that, as part of the training, Dr. Fridell address the recently released data reflecting disparities in traffic and pedestrian stops by BPD.

Moved/Seconded () Motion Carried

Ayes: Bernstein, Javier, Perezvelez, Roberts, Rogers, and Sherman.

Noes: None

Abstain: Lippman

Absent: Bartlett, Yampolsky

c. Whether to initiate a policy review based on the policy complaint filed by Stephen Pitcher, and what steps should be taken.

By general consent, this item was postponed to the next meeting.

9. CHAIR'S REPORT

None.

10. PRC OFFICER'S REPORT

None.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

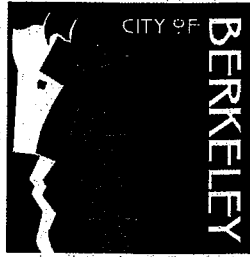
12. PUBLIC COMMENT

There were 2 speakers.

13. ADJOURNMENT

Motion to adjourn the meeting carried by general consent.

Meeting was adjourned at 10:20 p.m.



City of Berkeley

**Police Review Commission
Report to the City Council**

**Investigation Into the Police
Department Response to Protests
on December 6, 2014**

Commissioners:

**Alison Bernstein (Chair)
George Perezvelez (Vice-Chair)
Benjamin Bartlett
Jerry Javier
George Lippman
Terry Roberts
Ann Rogers
Michael Sherman
Ari Yampolsky**

December 1, 2015

10-19-15

[1.] PREFACE

The Berkeley Police Review Commission (PRC) was created by Berkeley voters "...to provide for community participation in setting and reviewing Police Department policies, practices and procedures and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department." (Berkeley Municipal Code Sec. 3.32.010.) Established in 1973, it is one of the oldest civilian oversight agencies in the nation.

The nine members of the Commission are appointed by the Mayor and City Councilmembers. In addition to the current members of the PRC listed on the cover page, former Commissioners Bulmaro Vicente and Lowell Finley (a temporary appointment) contributed to the investigation.

PRC staff are part of the City Manager's Office. PRC Officer Katherine Lee and temporary Investigator Beneba Thomas assisted the Commissioners in conducting their investigation and producing this report.

[2.] INTRODUCTION

Beginning on December 6, 2014, the City of Berkeley experienced several days of protests sparked mainly by the deaths of black 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. 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 what they saw and experienced. Several Commissioners drew on their own experience, having themselves participated in the December 6 protests. Some

¹ See Appendix 1.

Commissioners and staff attended the City Council's January 17 Worksession on Improving Police and Community Relations. Staff compiled written summaries of public comment from that Worksession and other City Council meetings at which the December 6 protests were discussed for the PRC.

The PRC's investigation included review of dozens of documents the BPD supplied, along with some 400 video clips of the December 6 events taken by BPD, protesters, media, and other civilian observers. Collectively, the Commissioners viewed each one of those clips.

The Commission studied the BPD's applicable policies, including General Orders C-64 (Crowd Management and Control), U-2 (Use of Force), and M-2 (Mutual Aid and Agreements with Law Enforcement Agencies). It also reviewed the parallel policies of the Oakland and San Francisco police departments, as well as state law governing mutual aid.

On June 9, the BPD issued its report, "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," which the Commission reviewed extensively. Police Chief Michael Meehan and the BPD Post-Incident Review Team presented the report to the PRC at its June 10 meeting, and then answered questions from the Commission. The Chief and/or review team members attended all subsequent PRC meetings, regular and special, to answer additional questions and provide clarifying information as the Commission continued its work.

The Commission appreciates the BPD's candor in spelling out in its report that the strategies used on December 6 did not achieve the desired outcome, and in identifying numerous areas for improvement. It is essential that the BPD continue to reaffirm its commitment to protecting free speech and facilitating protests regardless of the message being expressed.

The PRC's independent investigation and review of the events of December 6 does diverge in many respects from that of the BPD. In particular, the PRC questioned the accuracy of the BPD's characterization of who organized the 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 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.

[3.] FINDINGS

The following findings by the Police Review Commission have been compiled from personal participation by members of this commission; public comments at City Council meetings and Police Review Commission meetings;² analysis and review of the Berkeley Police Department's Response to Civil Unrest December 6th and 7th, 2014 including the applicable BPD General Orders; review of Berkeley Police Department videos; social media posts, photos, and videos; and review of reports from two of the mutual aid responders, the Hayward and Alameda Police Departments.

On December 1, 2014, BPD learned of a planned, unpermitted march scheduled to take place on Saturday, December 6, 2014.³

The December 6 demonstration originated as part of the national Black Lives Matter movement.⁴ The focus of the December 6 demonstration was to express frustration and anger over the failure of the authorities to charge the police officers responsible for the deaths of Michael Brown in Ferguson, Missouri and Eric Garner in Staten Island, NY, and others. A majority of the protesters believed the march was intended to be peaceful and nonviolent.⁵

BPD's official position toward the protest was one of "protecting and defending peaceful First Amendment activity."⁶ However, BPD believed the protest was organized as a "F___ the Police" march, citing a leaflet with a picture of a protester sitting atop an overturned/vandalized police vehicle.⁷ BPD did not try to contact

² All footnotes referencing an individual followed by a meeting type (City Council or PRC) and date refer to a statement made during the identified meeting. These statements are referenced here as part of the public record. It should be recognized that as with all testimony proffered to a public body, these statements were not the product of independent investigation by the commission. The PRC recognizes that some statements may have been made by persons who have filed claims against the city for injuries allegedly caused by city personnel on December 6.

³ 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.

⁴ <http://blacklivesmatter.com/a-herstory-of-the-blacklivesmatter-movement/>.

⁵ Moni Law, PRC Meeting, June 10, 2015.

⁶ BPD Report, page 15 (Mission Statement).

⁷ BPD Report, page 13.

the organizers until the day of the event and they failed to reach any of the organizers.⁸ Thus, BPD's planning unreasonably focused on potential agitators and vandals rather than facilitating a peaceful protest.

In anticipation of a possibly large and violent crowd (as seen in other demonstrations across the U.S.) BPD requested assistance from the Alameda County Office of Emergency Services under the Mutual Aid response policy.⁹ The following law enforcement agencies participated in the December 6 response: Alameda County Sheriff's Office, Alameda Police Department, Hayward Police Department, Pleasanton Police Department, Livermore Police Department, Oakland Police Department, California Highway Patrol, and UC Berkeley Police Department.¹⁰

The Mutual Aid responders brought non-lethal munitions, including bean bag shotguns, CS gas, and one tactical response vehicle.¹¹ BPD did not inventory the non-lethal munitions brought by other jurisdictions before or after the demonstration.¹² BPD did not provide any specific orders limiting the use of non-lethal force. Mutual Aid responders follow their own department's internal rules and protocol when using less-lethal force.¹³

The December 6 demonstration began at approximately 5:00 p.m. with a crowd gathering on the UC Berkeley Campus.¹⁴ As the crowd marched down Telegraph and into central Berkeley it grew in size.¹⁵ The crowd was peaceful, walking

⁸ BPD Report, page 13.

⁹ BPD Report, page 16, paragraph 3.

¹⁰ Chief Meehan confirmed with the PRC Officer that this list is accurate and complete.

¹¹ Hayward Police Department Special Response Unit, After Action Report – SRU Operation # 14-14, page 7; numerous eyewitnesses testified to the PRC about seeing an armored vehicle marked “Hayward Police Department” in or near the Civic Center area, Alejandro S., City Council Meeting, December 16, 2014.

¹² BPD Report, pages 52-53.

¹³ California Office of Emergency Services Law Enforcement Guide for Emergency Operations.

¹⁴ BPD Report, page 17; Berkeley Police Department Detail Call for Service Report for 12/6/14 (Case #2014-00071905) (hereafter “CAD Report”), page 2. A reference to a time in the CAD report indicates the time that the dispatcher made the entry into the CAD system. Based on comments from BPD, the PRC recognizes that the time noted by dispatch may vary from the actual time that the event occurred.

¹⁵ CAD Report, pages 3-4.

through the streets and chanting.¹⁶ When the crowd reached the Public Safety Building, around 6 p.m., it had grown to several hundred.¹⁷

Shortly after the crowd arrived at the Public Safety Building, BPD set up a skirmish line¹⁸ across MLK at Addison to keep the crowd away from the Public Safety Building entrance and the staging area.¹⁹ As the crowd continued to grow several members of the demonstration were seen testing the skirmish line and yelling insults at the police officers. In an effort to keep the demonstration non-violent, some demonstrators admonished the group to remember that “we are peaceful and non-violent.”²⁰

When establishing the skirmish line, BPD officers gave verbal commands to the front of the crowd to stay back and began to push protesters away.²¹ The protesters believe that BPD failed to give adequate or sufficiently audible warnings to the demonstrators to avoid the skirmish line officers’ safety zone.²² Numerous demonstrators reported being struck in the head and/or back with batons at MLK and Addison. This was the first use of force on December 6²³ and the crowd became more verbally confrontational with BPD thereafter.²⁴

Around 6:30 p.m., a BPD Commander determined that the roadblock at MLK and Addison was causing a conflict with the crowd and was unnecessary. BPD then released most of the lanes on MLK to allow the crowd to flow northbound.²⁵ BPD officers remained in front of the Public Safety Building, in a line protecting the safety of the building.²⁶

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

¹⁷ M. Gordon, PRC Meeting, February 11, 2015; CAD Report, page 4 (900 people)

¹⁸ When a skirmish line is set up, officers are directed to maintain a safety zone, approximately one arm’s length plus the length of a baton, around themselves.

¹⁹ BPD Report, pages 16 – 17; CAD Report, page 6.

²⁰ BPD videos.

²¹ BPD Report, page 19 (This was part of BPD’s “safety zone” policy wherein skirmish line officers create and maintain a safety space between themselves and protesters).

²² Moni Law, PRC Meeting, June 10, 2015.

²³ BPD Report, page 20.

²⁴ Moni Law, PRC Meeting, December 10, 2014.

²⁵ CAD Report, page 6.

²⁶ BPD Report, page 22, paragraph 3.

As the crowd moved north towards University Avenue,²⁷ a protester approached a BPD skirmish line officer with his arms raised. The protester was an older gentleman with white hair and a beard. The protester came very close to the officer, well within an arm's length. The officer used his baton to push the protester away. The protester fell backward, tripping over his dog, and fell to the ground.²⁸ Many protesters saw this exchange and shortly thereafter the atmosphere became more confrontational wherein demonstrators became verbally confrontational with the police and several projectiles were thrown toward the police from the north moving crowd.²⁹

The projectiles thrown at the police (throughout the evening) included a screw driver, bricks, rocks, metal pipes and a bag of gravel.³⁰ At least five officers were injured, one with a dislocated shoulder.³¹ After the projectiles were thrown at officers near MLK Jr. Way and Addison Street, BPD responded by firing one foam baton round³² and rolling four smoke canisters into the crowd.³³ A protester picked up one of the smoke canisters and threw it back toward the officers.³⁴

Some protesters attempted to dissuade acts of violence and encouraged the crowd to stay focused on the purpose and to continue to march north. Some of these protesters placed themselves between the police skirmish line and the protesters. At least one protester who attempted to keep the crowd peaceful reported being struck in the back with a baton. BPD did not communicate or attempt to manage the demonstration with the protesters who assumed leadership

²⁷ BPD Report, page 20; CAD report, page 6.

²⁸ James Arcellano, PRC Meeting, December 10, 2014; Tonya Carpenter, City Council Meeting, December 16, 2014; BPD Report, page 21.

²⁹ M. Gordon, PRC Special Meeting, February 25, 2015; BPD report, page 21, paragraph 3; CAD report, pages 6-7.

³⁰ BPD Report, page 21, paragraph 3; CAD Report, pages 6-7.

³¹ BPD Report, page 21, paragraph 3.

³² The foam baton round used by BPD looks like a rubber bullet.

³³ Steven O, City Council Meeting, December 16, 2014; BPD Report, page 21, paragraph 4; CAD Report, page 7.

³⁴ Male Speaker, City Council Meeting, December 16, 2014; BPD Report, page 30 (photo); CAD Report, page 7.

roles or in any way take advantage of the de facto peaceful leadership which emerged from the crowd.³⁵

The crowd eventually dispersed from the front of the Public Safety Building and continued to move north toward University. At MLK and University, the majority of the protesters began to move west on University.³⁶

Some individuals wearing black with mask covered faces vandalized the Trader Joe's at MLK and University.³⁷ BPD videotaped the vandalism and destruction of Trader Joe's, but did not respond³⁸ or apprehend the criminals.³⁹ One male citizen confronted the masked men at Trader Joe's and he was attacked.

Because BPD did not intervene to stop the various acts of vandalism, Berkeley residents and some protesters felt compelled to take action to stop the vandalism and looting. These acts of citizen policing left the citizens open to violent retaliation from the vandals.⁴⁰ As the crowd moved west on University, a small sub-group engaged in vandalism, including tagging buildings with spray paint, breaking windows, and overturning trash cans.⁴¹ Residents who live in this area repeatedly tried to stop this conduct and were met with violence and intimidation.⁴² The police were not present.⁴³

The law enforcement presence at the University onramp kept the protesters off of the freeway.⁴⁴

At 8:20 p.m. and thereafter, Lt. Schofield gave numerous Dispersal Orders at Berkeley Way and West Street.⁴⁵ Lt. Schofield also announced that the

³⁵ Moni Law, PRC Meeting, December 10, 2014; Anonymous Woman, PRC Meeting, December 10, 2014; Moni Law, PRC Meeting, June 10, 2015.

³⁶ BPD Report, page 23, paragraph 2; CAD Report, pages 6-8.

³⁷ BPD Report, page .22, paragraph 3; CAD Report, page 7.

³⁸ M. Gordon, PRC Special Meeting, February 24, 2015.

³⁹ BPD Report, page .22, paragraph 3; CAD Report, page 7.

⁴⁰ BPD Report, page 22, paragraphs 1, 3.

⁴¹ CAD Report, pages 7-8.

⁴² Carol Denney, PRC Meeting, June 10, 2015.

⁴³ BPD Report, page 23, paragraph 2.

⁴⁴ BPD Report, pages 23-24.

⁴⁵ CAD Report 8:20 p.m. dispersal order; BPD Report, page 24, paragraph 4

demonstration was an unlawful assembly.⁴⁶ BPD repeatedly attempted to kettle the protesters and their attempts repeatedly failed.⁴⁷

The protest then moved eastbound, back toward the UC campus. As the crowd moved east through Berkeley, there were reports of sponge rounds and beanbags fired at the crowd with reported injuries from beanbags or sponge rounds throughout the demonstration. Marchers reported being forced or trapped by BPD into a parking lot near Acton and University, then being shot with rubber bullets and CS gas as they tried to escape.⁴⁸ As the demonstrators regrouped near the UC campus there were more reports of vandalism and a reported fire.⁴⁹

At 9:00 p.m., BPD issued Dispersal Orders to the crowd located on Bancroft between Dana Street and Telegraph Avenue. BPD "Command had an increasing concern that there would be more looting, vandalism and violent riotous behavior in the Telegraph Ave. business district if the crowd was allowed access."⁵⁰ BPD issued more Dispersal Orders and attempted (unsuccessfully) to kettle the crowd again.

At 9:30 p.m., more than 100 officers blocked the intersection of Bancroft Way and Telegraph Avenue. The crowd of approximately 200 included many UC Berkeley students. Police then pushed protesters south toward Durant and Telegraph Avenues. But there was a line of officers at Durant blocking the protesters' path, making it impossible for them to comply with the order.⁵¹

Police used batons to push protesters down Telegraph. The Alameda officers reported that they were directed to move the crowd southbound on Telegraph and

⁴⁶ BPD videos.

⁴⁷ CAD Report 8:20 p.m. dispersal order & order to kettle; BPD report, pages 50-51.

⁴⁸ Ted Ambrose, December 10, 2014 PRC Meeting (stated that as the protest began to die down he and other protestors were on a side street where the police blocked them on the street and didn't tell them anything and they had no idea what was going to happen. People were forced to break down a fence to escape and then the police shot rubber bullets and tear gas into the crowd who were trying to get out because they were afraid for their lives).

⁴⁹ CAD Report 9:26 p.m. and 9:46 p.m. describes rocks and bottles thrown from the back of the crowd toward officers.

⁵⁰ BPD Report, page 25 paragraph 3.

⁵¹ BPD Report, p. 26.

they did so with their batons while yelling "Get back!"⁵² Numerous protesters reported being hit with batons, many in the face and head. Many of the baton strikes were delivered using over the head or over the shoulder swings. Some claimed they were hit even though they were peaceful.⁵³

There were also reports of officers striking at cameras or cell phones that were being used to record the events. One Alameda Police officer reported that he mistakenly pushed a male member of the press: "I used my baton to push several of the protestors back in order for them to move. At one point I pushed a White Male in the back with my baton in order for him to move. At no point did I see any readily identifiable credentials that indicated he was with the press. He turned around, stepped back and yelled at me claiming to be with the press. He then pulled a small badge from around his neck saying he was from the press again. I did not get a good or close enough look at the badge to verify whether or not that individual had a legitimate press pass. After he yelled at me he stepped away from the large crowd and I lost visual of him."⁵⁴

Simultaneously, a much larger crowd, estimated between 1000 and 1500 demonstrators, had gathered at Telegraph Avenue and Durant Avenue.⁵⁵ Dispersal Orders were given to the crowd which referred to the possible use of less-lethal munitions, but the orders did not include specific references to CS gas. The crowd did not disperse.⁵⁶

Around 10:00 p.m., Chief Meehan approved the deployment of CS gas and BPD began deploying CS gas in the area of Telegraph and Durant.⁵⁷ After the

⁵² Alameda Police Department Report No. 14-6614 (hereafter "Alameda Police Report"), several references. Note: The Alameda Police Department was the only mutual aid responder on December 6 who provided a detailed report in response to PRC staff's request for records of a law enforcement agency's involvement that night. Thus, no references can be made with the same specificity regarding other agencies' actions.

⁵³ BPD Report, page 26, paragraph 2 (batons used); Benjamin Schaub, PRC Meeting, December 10, 2014 (witnessed officers attacking non-violent protestors).

⁵⁴ Alameda Police Report, Supp. No. 7.

⁵⁵ BPD Report, page 26, paragraph 1.

⁵⁶ Alameda Police Report, page 3. ("A Lieutenant from the BPD gave the crowd several commands to disperse . . . The order to disperse was loud and clear, however, the crowd refused to disperse and continued throwing rocks and glass bottles at officers.")

⁵⁷ BPD Report, page 29, paragraph 2; Alameda Police Report (eight officers reported deploying CS gas).

CS gas was used, reports of rock and bottle throwing and vandalism of police cars increased.⁵⁸ At approximately 11:18 p.m., a man was injured by a projectile at Fred's Market.⁵⁹ The subject was transported to Alta Bates.

At approximately 11:30 p.m., BPD again attempted to disperse the crowd. An unlawful assembly was declared and BPD and the Mutual Aid units began to form around the protesters.⁶⁰ At 11:37 p.m., the Dispersal Orders began again.⁶¹ The officers were directed to push the crowd south toward Oakland. The officers created multiple skirmish lines pushing parts of the crowd in different directions.⁶² The officers moved the crowd southbound with their batons and thrusting motions. At various points the protesters were pushed by one skirmish line into another skirmish line. This haphazard effort exacerbated the problem and aggravated the crowd.⁶³ Numerous protesters reported being hit with batons and sprayed with CS gas as they attempted to comply with the dispersal orders and marched toward Oakland.⁶⁴

⁵⁸ 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).

⁵⁹ CAD Report, page 16; Fred's Market is located at 2521 Telegraph Avenue at Blake.

⁶⁰ Andrea Prichett, City Council Meeting, December 16, 2014; BPD Report, page 25, paragraph 3; Zachary Running Wolf, City Council Meeting, December 16, 2014; Approximately 11:40 p.m., Berkeleyside reported that "Some of the protestors are sitting on the ground. The demonstration appears to be peaceful."; CAD Report, page 16.

⁶¹ CAD Report, page 17.

⁶² Nicky M., City Council Meeting, December 16, 2014 (told the council that she witnessed a total disconnect between citizenry and the police. She said she was on Telegraph Avenue and heard the cops scream skirmish line and then cops dressed in battle gear ran over them); BPD videos.

⁶³ Ted Ambrose, City Council Meeting, December 16, 2014 (stated that as the protest began to die down he other protestors were on a side street where the police blocked them in and they were forced to break down a fence to escape. As they were escaping the police shot rubber bullets and tear gas at them); BPD videos; Police used batons to push protesters down Telegraph; BPD Report, page 26, paragraph 3..

⁶⁴ 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->

At around 12:20 a.m., the process to “drive the crowd south” was renewed. BPD orders were to “force the issue, keep moving them south.”⁶⁵ The crowd was forced to walk to Oakland, as the police presence prevented them from leaving the crowd.

At approximately 12:32 a.m., the police reported that they were being hit with projectiles⁶⁶ and police vehicles were vandalized with inflammatory language and graffiti.⁶⁷

At about 1:00 a.m. near Telegraph Avenue and Parker Street, the police again began using CS gas⁶⁸ to continue to push the protest southbound.⁶⁹ Marchers stated that they were told to go to Oakland.⁷⁰ The crowd complied with officer demands to move south, but the police continued to pursue them, deploying CS gas at six intersections on Telegraph⁷¹ and using raised batons and baton jabs.⁷² No evidence of dangerous crowd activity has been provided to the Commission to justify these repeated uses of force. The combination of repeated CS gas exposure along with the lengthy walk was extremely impactful, and there were reports of protesters suffering physical and emotional injuries as a result. The

pincus_n_6290652.html; Steven O., City Council Meeting, December 16, 2014 (stated he was one of the hundreds of peaceful protesters that was tear gassed. He said that he witnessed bystanders, media, and students that received tear gas as they were retreating); CAD Report, page 17; Walker Quinn, City Council Meeting, December 16, 2014; BPD videos.

⁶⁵ CAD Report, page 18.

⁶⁶ CAD Report, page 19.

⁶⁷ BPD Report, page 27, paragraph 3; CAD Report, pages 18-19. Also, the Alameda Police said that all four of their patrol vehicle were vandalized (Alameda Police Report, p. 4.)

⁶⁸ CAD Report, page 20.

⁶⁹ 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; BPD Report, page 31, paragraph 1.

⁷⁰ John, PRC Meeting, December 10, 2014 (stated that protesters were marched to Oakland).

⁷¹ BPD Report, page 31, paragraph 1; two videos of 1-1:30 AM Sunday December 7 2014 Telegraph Avenue: <https://www.youtube.com/watch?v=xUHvro4idPY> ; <https://www.youtube.com/watch?v=Rn7Bu8TCXU8>

⁷² Alameda Police Report; several references to moving the crowd south using CS gas and batons.

marchers were driven over the city line into Oakland around 1:30 a.m.⁷³ No information has been provided regarding as to what involvement, if any, the BPD had once the crowd moved into Oakland.

⁷³ CAD Report, page 22.

1 [4.] Discussion

2 --Revised on 10-16 pursuant to 10-14 mtg; changes are underlined

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

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

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

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

24 The BPD's approach on December 6, 2014, focused too heavily from the start on crowd
25 control, when the emphasis should have been on crowd management. The crowd control
26 posture resulted from an assumption that the protesters were largely motivated by those
27 promoting an "FTP" event and associated with violent action. In other words, the emphasis was
28 on crowd control not crowd management, a critical flaw in planning that set the stage for what
29 was to follow. To the contrary, while the focus of the protests was on the actions of police
30 across the country. While the purpose of the demonstration was to protest the abusive actions
31 by police across the country, the vast majority of protesters intended to march peacefully. It is
32 imperative that BPD continue to develop tools and techniques to assist officers in navigating
33 complex and confusing crowd situations which may have mixed elements of legal and illegal,
34 peaceful and violent behavior.

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

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

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

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

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

11 The PRC is concerned that the use of CS gas on December 6 was excessive.
12 Additionally, given the failures in the recording equipment, it is unclear what prompted the
13 decision to use CS gas at the specific time and location, and how decisions were made to
14 continue to deploy CS gas, and whether the continued use was necessary. Given the existing
15 record, the PRC is concerned that the use of CS gas was arbitrary, and was not based on the
16 necessary understanding of the situation on the ground. The PRC is concerned that confusing
17 and conflicting orders by different squads of law enforcement made it impossible for protesters
18 to comply with orders at or near the time CS gas was deployed, and this confusion may have
19 contributed to the apparent failure to disperse or agitation of members of the crowd.
20 Additionally, the deployment of CS gas in densely populated neighborhoods poses a significant
21 risk to not only to non-violent protestors, but also bystanders, and the residents of the
22 surrounding neighborhoods.⁷ In addition to concerns about the quantity of gas that was used,
23 the PRC is concerned about BPD's lack of attention to ensuring medical care was readily
24 available for those exposed to the gas.

25 The PRC believes that Berkeley is out of step with its neighbors on the use of CS gas.
26 The San Francisco Police Dept. does not use tear gas.⁸ According to the Oakland Crowd
27

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

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

30 ⁶ Alameda Police Report, various references.

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

33 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
34 conversation that SFPD has not used tear gas in the 20 years she has been with the
department.

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

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

15 BPD told the PRC that they were unable to report on how much less-lethal munition the
16 department expended. We do know that officers fired one less-lethal foam baton round shortly
17 after 6:30 pm on MLK Jr. Way near Addison Street. Another report around 11:15 pm states
18 "Fred's Market, man shot w/ projectile BFD loaded w/ rig." The subject was transported to Alta
19 Bates.¹¹ (GL) Hayward police reported a need to restock their specialty impact munitions, but
20 did not specify how much was used.¹² (staff) No other information has been made available
21 regarding the use of less-lethal munitions.

22 Similarly to our concerns with the use of CS gas, the PRC is concerned that the use less
23 lethal munitions on December 6 was excessive. and that the absence of a contemporaneous
24 record makes it impossible to ascertain what prompted the decision to deploy. We are also
25 concerned that Berkeley's policy regarding the use of less lethal munitions in crowd control
26 situations is not in keeping with best practices, and need to be revised. Under Oakland policy,
27 less-lethal munitions "shall not be used for crowd management, crowd control or crowd
28 dispersal during demonstrations or crowd events,"¹³ and they "shall be used only when other
29 means of arrest are unsafe and when the individual can be targeted without endangering other
30

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

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

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

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

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

1 crowd members or bystanders.”¹⁴ Berkeley has no such restrictions. The PRC is
2 recommending a revision of BPD’s policy on using less-lethal munitions, to minimize the risk
3 that innocent persons will be hit. (staff)

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

8
9 **Baton use:** How to assure that batons are used properly and appropriately.

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

14 *Level of force.* Under current BPD policy, batons, as a form of non-lethal force, may be
15 used by an officer: (a) to protect themselves or another from person from physical injury; (b) to
16 restrain or subdue a resistant individual; or (c) to bring an unlawful situation safely and
17 effectively under control.¹⁵ Additionally, in a crowd situation, only reasonable force may be used
18 if needed to disperse a crowd, make arrests, or move a crowd from an area.¹⁶ The PRC finds
19 that the level of baton deployment usage by police on December 6 did not conform to policy as
20 it was at times excessive and indiscriminate. (GL/staff.)

21 *Methods of baton use.* BPD officers are trained to use batons on certain target areas of
22 a subject’s body. The target and non-target areas are specified POST training documents¹⁷
23 and reviewed in BPD Mobile Field Force training.¹⁸ Target areas are the “center mass,” arms,
24 legs, and torso, with the heart to be avoided; non-target areas are the head, neck, throat, heart,
25 spine, kidneys and groin.¹⁹ (staff) Based on the reports from civilians of baton strikes to the
26 head area, it appears that some police officers violated training orders or policies in this regard.
27 Moreover, although the BPD explained that the strikes landing on non-target areas resulted
28 from the subject’s movements, the number of reports of head strikes casts doubt on is
29 inconsistent with that explanation. (GL/staff.) The PRC recommendation calls for a thorough

30
31 ¹⁴ OPD Crowd Control Policy

32 ¹⁵ General Order U-2, paragraph 19.

33 ¹⁶ General Order C-64, paragraph 6.

34 ¹⁷ As stated by BPD in a PRC meeting.

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

¹⁹ Ibid.

1 review of BPD's policy regarding the use of batons during crowd control and crowd
2 management situations. Particular attention should be given to the kind of authorized baton
3 strikes, to include the use of jabs and rakes.

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

6
7 **Technology:** How to assure it is both operable and responsive to the needs of the
8 mission.

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

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

21 BPD's video capacities were also inadequate, with batteries that did not charge, and
22 cameras with that produced very poor quality images. The communication system available to
23 broadcast to the crowd was also inadequate, and limited the efficacy of the crowd dispersal
24 orders.

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

27 The role of mutual aid responders was an area of major concern for the PRC. The PRC
28 recognized that mutual aid responders are accountable to their own policies and procedures
29 regarding the use of force. However, clearly more needs to be done to establish the rules of
30 engagement that BPD wishes to follow, and to emphasize the focus on crowd management,
31 and de-escalation. The PRC believes that establishing a policy of accounting for less lethals
32 before and after the incident, whenever practicable, will help increase accountability.

33
34
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²⁰ BPD Report, page 46, paragraph 4.

1 **Media:** How to avoid limitations on media access and better assure the safety of
2 members of the media in escalating, crowd-control situations. The PRC is requesting the
3 counsel to refer the matter of media access back to the PRC to form a subcommittee to address
4 the issue of media access.

5
6 **Overall Preparation and Planning, and Questions Raised:** [from Comm. Roberts' doc]

7 It is important that the city's view of the events of December 6 & 7 also address some
8 bigger picture questions about whether some of the problems experienced could have been
9 anticipated and prevented by far earlier, timelier preparation by BPD. Looking at these issues
10 sheds light on how the department is managed and if it is thinking proactively rather than
11 reactively.

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

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

23 What are the "best policing practices" in preparing for similar situations? Why weren't the
24 above and similar preparations made far earlier as part of the normal course of BPD business?
25 Is BPD fully ready to respond to the next major incident? What are BPD's deficiencies
26 compared to best practices and when will they be addressed?

27
28 **CONCLUSION**

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

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Martinez, Maritza

Subject: FW: Community Forum on Racial Justice

COMMUNICATION No. 2301

From: J. George Lippman [george@igc.org]

Sent: Thursday, October 15, 2015 1:43 PM

To: Lee, Katherine

Cc: Norris, Byron

Subject: Community Forum on Racial Justice

Kathy, as we discussed. Please share with the commission and perhaps include in the agenda packet if possible.

George L.

*

Hello All, attached is the flyer. Please spread the word!

Congresswoman Barbara Lee with Councilmember Max Anderson
are having a
Community Forum on Racial Justice
Saturday, November 7, 2015
2:00 PM
St Paul A.M.E Church
2024 Ashby Avenue, Berkeley

"We must confront racism in all its forms to rid our communities of injustice."

Join Congresswoman Barbara Lee
with
Special Invited Guest Councilmember Max Anderson
for a
Community Forum on Racial Justice
Addressing Institutional & Structural Racism
on
Saturday, November 7th @ 2pm

St. Paul AME Church
2024 Ashby Ave.
Berkeley, CA 94703
Located near Ashby BART

Space is limited.
Confirm your attendance to
LeeCA.Events@mail.house.gov
or call (510) 763.0370
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