**01**

**Worksession Item**

CITY OF BERKELEY

Office of the City Manager

WORKSESSION
September 15, 2015

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, Interim City Manager

Submitted by: Michael K. Meehan, Chief of Police

Subject: Mid-year 2015 Crime Report

## INTRODUCTION

At the request of City Council, the City Manager provides semi-annual reports on crime statistics in Berkeley. This report provides information on reported Part One crime for January through June of 2015 and compares those statistics with mid-year crime data from 2011 through 2014. This report provides Council with accurate crime data with the intent of informing the discussion on current efforts to reduce crime and victimization in the City of Berkeley.

## CURRENT SITUATION AND ITS EFFECTS

In the first six months of 2015, reported Part One crime in Berkeley increased by 23% overall. With the exception of a decrease in homicides, Part One crimes increased in all categories with the largest numerical increase found in larceny/theft. Increases in Part One crime are being experienced across numerous regional jurisdictions, and increases have also been reported across California. There are various factors being considered as causes for these increases.

### Homicides

There were no homicides in Berkeley during the first six months of the 2015. Felony aggravated assaults and cold case investigation continue to be a focus of our investigators.

### Robberies

Overall, robberies have increased 53%, from 108 in 2014 to 165 this year compared to the first half of 2013 when there were 221 robberies. Pedestrian robberies increased 52%. This increase appears to have begun in late 2014 robberies trended upwards.

Rape and Aggravated Assaults

The FBI implemented the revised Uniform Crime Report sexual assault definition in January 2015 which resulted in nationwide increases in reported sexual assault statistics. Reported rapes were up 22%, an increase of 3 cases, as compared to 2014. Of Berkeley's 17 reported rapes, 9 would not have been recorded under the previous UCR definition. Eighty eight percent of reported rapes involved an acquaintance of some type, either recently introduced, or previously known to the victim. Alcohol was also present in most of the cases. There were two reported stranger rapes. No other similar incidents were reported. Aggravated Assaults were up 44%, with 22 additional incidents than in 2014. Aggravated assaults often involve people who know each other. Many of those cases involved victims or suspects who are homeless and/or suffering from mental illness or in some cases both. There were no unusual series to report in either category.

Burglary, Larceny and Auto Theft

Overall, Part One Property crimes increased by 21%. Burglaries increased 38% compared to 2014, with residential burglaries increasing by 86%, while commercial burglaries decreased by 19%. Burglaries of garages and sheds are included as they are categorized as "residential" burglaries. Larcenies were up by 17%, two hundred ninety one cases, and there were forty-six more Auto Thefts, a 15% increase as compared to the first six months of 2014.

**Data**

Data on serious crime is collected annually by the Federal Bureau of Investigation (FBI) from over 17,000 law enforcement agencies representing over 90% of the U. S. population. The FBI's primary objective in the Uniform Crime Report (UCR) is to generate a reliable set of crime statistics for use in law enforcement administration, operation, and management in the United States. The UCR tracks the following crimes:

| Violent Crimes | Property Crimes |
|---|---|
| Murder | Burglary |
| Rape | Larceny (petty and grand theft, auto burglary) |
| Robbery | Auto Theft |
| Aggravated Assault | Arson* |

**Arson is a UCR crime tracked separately from violent and property crime. It is included in the accompanying graphs.*

The UCR data provides the Berkeley Police Department the ability to analyze national and local crime trends, determine the effectiveness of response to crime, and conduct future planning and potential resource allocation. The FBI UCR handbook discourages using UCR statistics to compare crime rates of one jurisdiction to another because of the complex variables affecting crime and crime reporting practices.

**BPD Crime Prevention and Response Strategies**

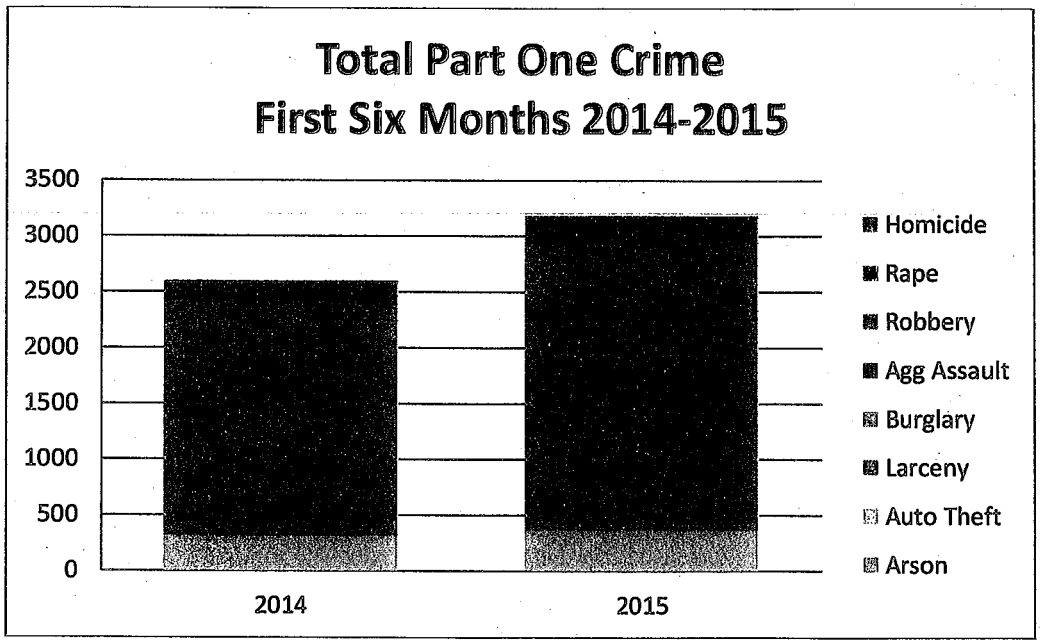
2015 has been a challenging year for law enforcement. The Berkeley Police Department's goal was to reduce the level of Part One Crime experienced in 2014 (the lowest in 50 years). The Department continued to implement crime prevention and response strategies and increase community engagement, including:

- Continued rapid and robust response to crimes in progress.
- Increasing focus on prevention of crime.
- Weekly Crime Analysis and Response Strategy meetings and coordination of focus and resources, including identification and focus on chronic offenders.
- Frequent and regular internal communication regarding crime trends, series, chronic and wanted offenders, and crime prevention strategies.
- Auto burglary suppression teams in areas and at times when data suggested the highest likelihood of auto burglaries will occur.
- Collaboration with UCPD on rape awareness and prevention education.
- Youth Services Detectives collaborating with Juvenile Probation to determine if high risk juvenile offenders are involved in Berkeley's residential burglaries.
- Strategically use of bike patrols in the downtown area, and collaboration with UCPD on bike patrols on and around Telegraph Avenue.
- In collaboration with UCPD, beginning use of "Bait Bike" program to apprehend Berkeley bicycle thieves.
- Education and support regarding BikeIndex.org online bicycle registry program to help identify and recover stolen bicycles.
- Work with BART to write and distribute community alerts and bulletins to increase rider awareness and to teach personal safety measures designed to reduce victimization.
- Pursuit of Department of Justice COPS grant which, if obtained, would fund part of the cost of an additional School Resource Officer that could positively support focus on services, support and intervention for students at risk of involvement in crime.
- In January 2015, the department implemented a new beat structure to improve efficiency and equalize workload among patrol officers. The Department plans to analyze the new structure to verify that the changes have resulted in beats being consistently staffed during most hours of the day and night and officer workload levels are equally distributed across beats.
- Utilizing Nixle social media alert and notification service to inform the community about crime prevention strategies, police incidents (e.g. missing persons at risk) and road closures caused by traffic accidents.
- Continued Crisis Intervention training (CIT) of officers and supervisors.
- Monthly Berkeley Safe Neighborhood Committee Meetings to address public safety concerns and collaborate on safety strategies.

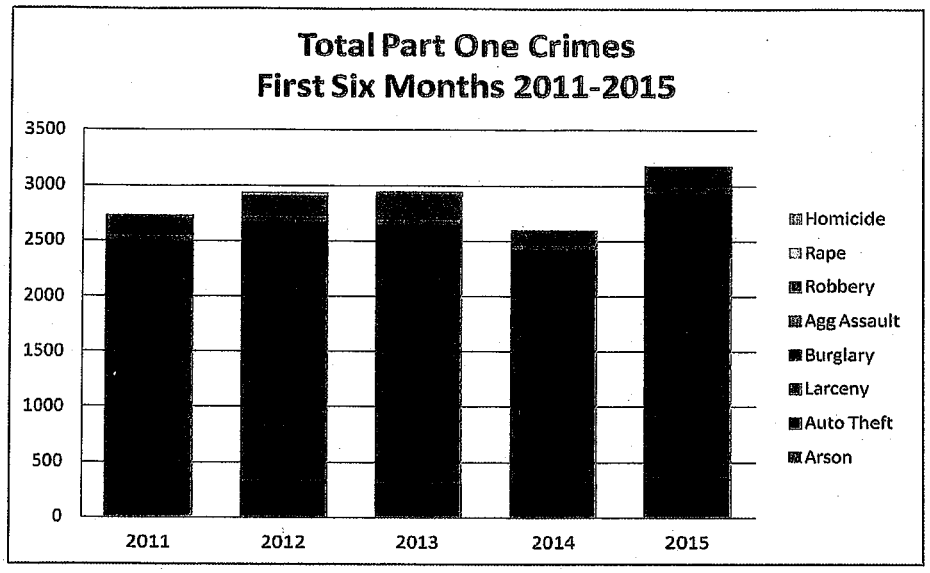
The attached graphs include six-month totals of UCR data for Part One Violent and Property Crimes for 2014 and 2015 in Berkeley, as well as five-year trends in Part One Violent Crimes and Part One Property Crimes.

Graphs below include:

- UCR Part One Violent and Property Crime, two year trend
- UCR Part One Violent and Property Crime, five year trend
- UCR Part One Violent Crime, five year trend
- UCR Part One Property Crime, five year trend




| | Homicide | Rape | Robbery | Agg Assault | Burglary | Larceny | Auto Theft | Arson |
|---|---|---|---|---|---|---|---|---|
| 2014 | 1 | 14 | 108 | 50 | 432 | 1683 | 302 | 5 |
| 2015 | 0 | 17 | 165 | 72 | 598 | 1974 | 348 | 9 |




| | Homicide | Rape | Robbery | Agg Assault | Burglary | Larceny | Auto Theft | Arson |
|---|---|---|---|---|---|---|---|---|
| 2011 | 1 | 10 | 150 | 64 | 506 | 1661 | 314 | 15 |
| 2012 | 3 | 18 | 177 | 61 | 433 | 1910 | 319 | 6 |
| 2013 | 1 | 18 | 221 | 60 | 479 | 1860 | 293 | 8 |
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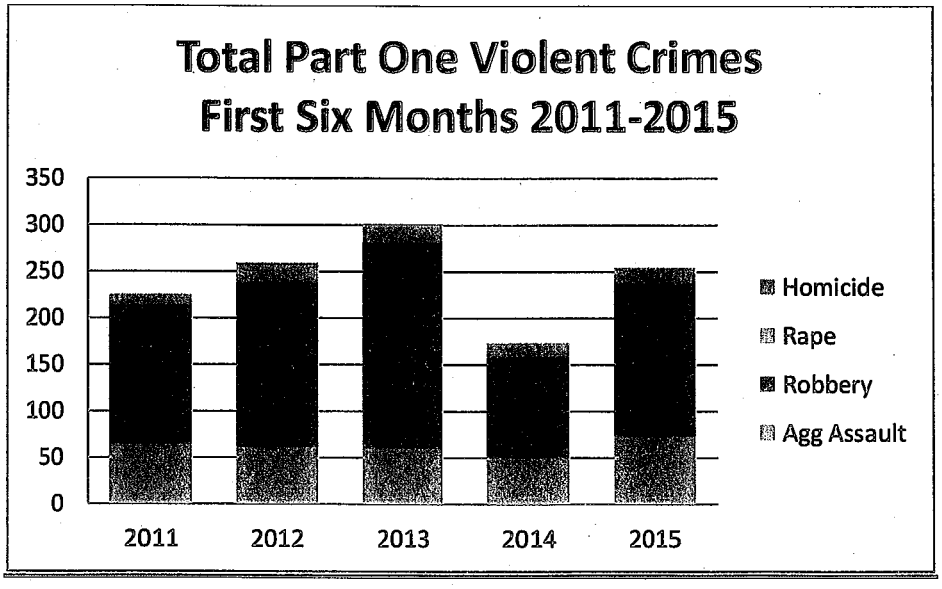


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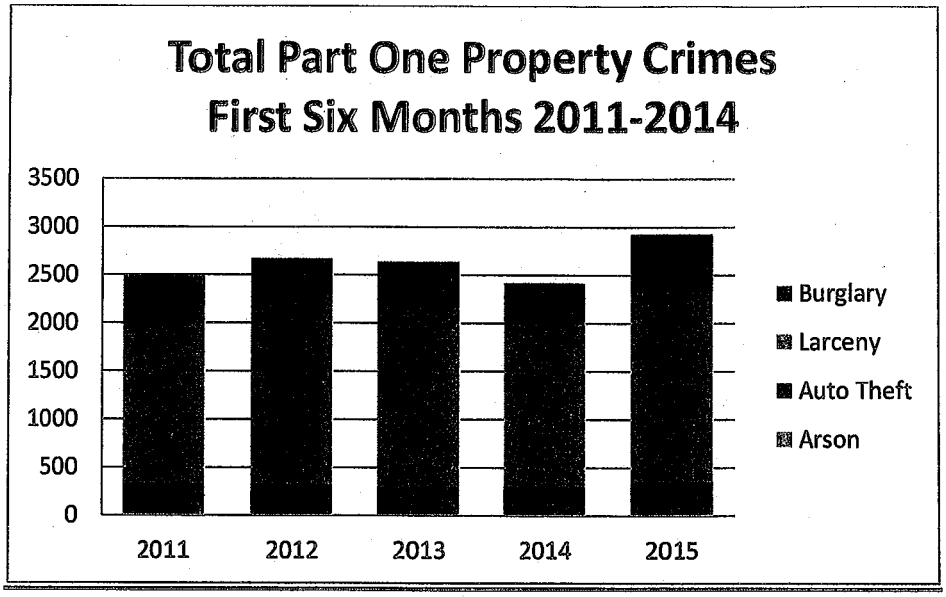


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## ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities or effects associated with the subject of this report.

## CONTACT PERSON

Michael K. Meehan, Chief of Police, (510) 981-5900

# 2015 Mid-year Crime Report

Berkeley Police Department
September 15, 2015

Chief Michael Meehan
Captain Andrew Greenwood
Captain Dave Frankel
Captain Cynthia Harris

# National Night Out-2015

2014: 58 sites

2015: 100+ sites

# Nixle Subscribers

2014: 2400

2015: ≈ 4000

# Berkeley Police Department: Reflecting the Diversity of our Community

Covering the Bases (Police Magazine) Diversity On the Force (Sept 2015)

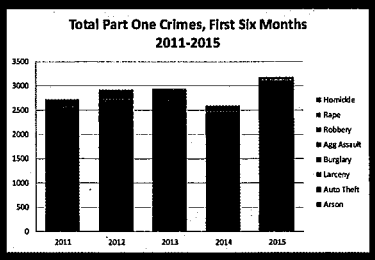
# Uniform Crime Reporting Categories

Property Crimes:

- Burglary
- Larceny
  - Petty Theft
  - Grand Theft
  - Auto Burglary
- Auto Theft
- Arson

Violent Crimes:

- Murder
- Rape
- Robbery
- Aggravated Assault

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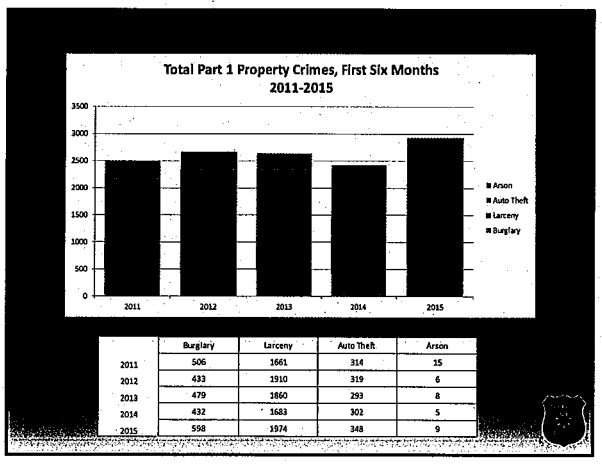


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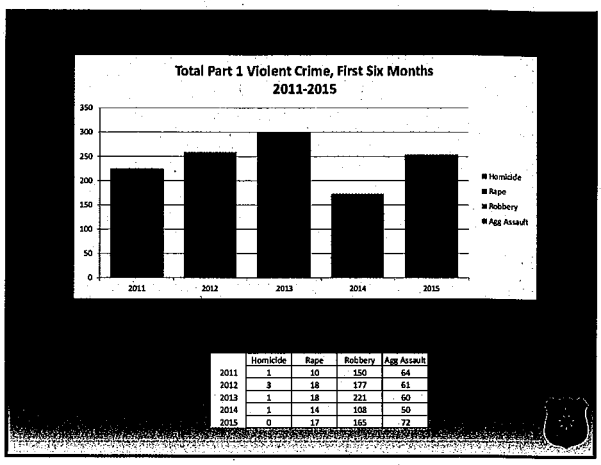


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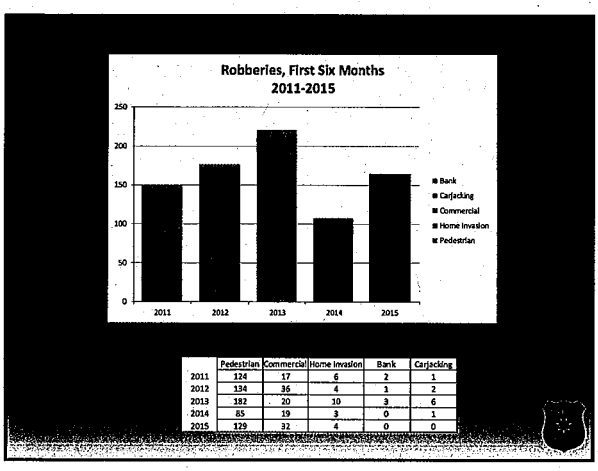
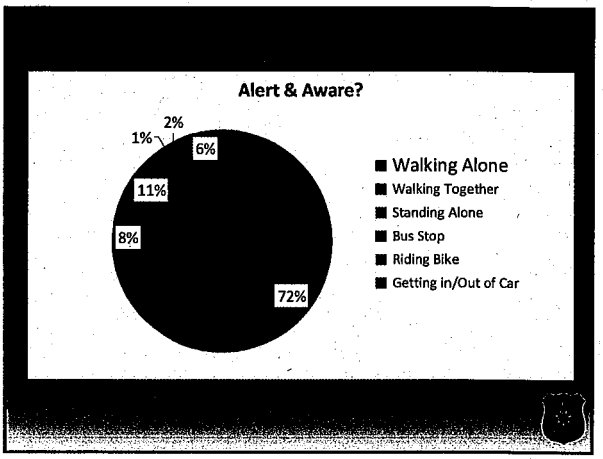
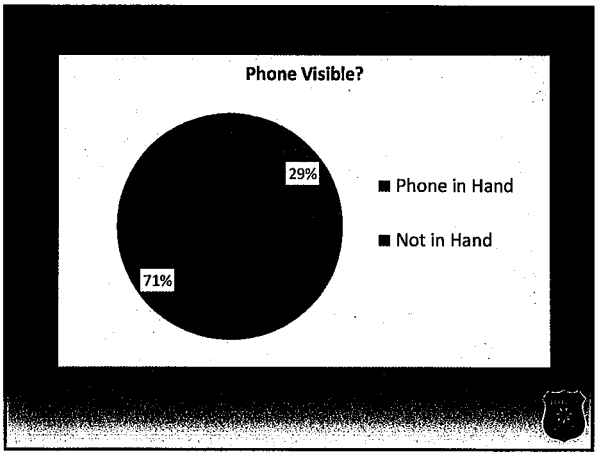


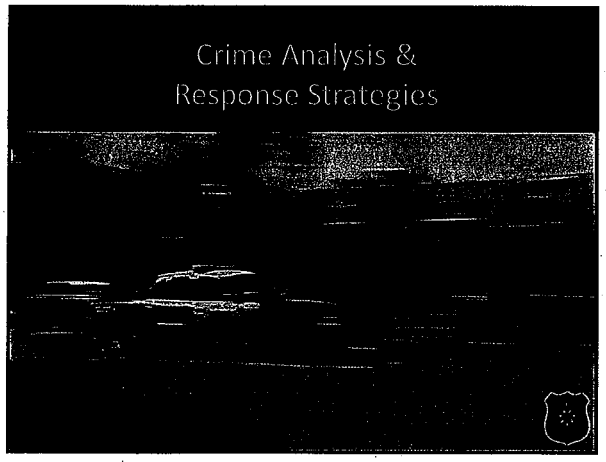

| | Pedestrian | Commercial | Home Invasion | Bank | Carjacking |
|---|---|---|---|---|---|
| 2011 | 124 | 17 | 6 | 2 | 1 |
| 2012 | 134 | 36 | 4 | 1 | 2 |
| 2013 | 182 | 20 | 10 | 3 | 6 |
| 2014 | 85 | 19 | 3 | 0 | 1 |
| 2015 | 129 | 32 | 4 | 0 | 0 |

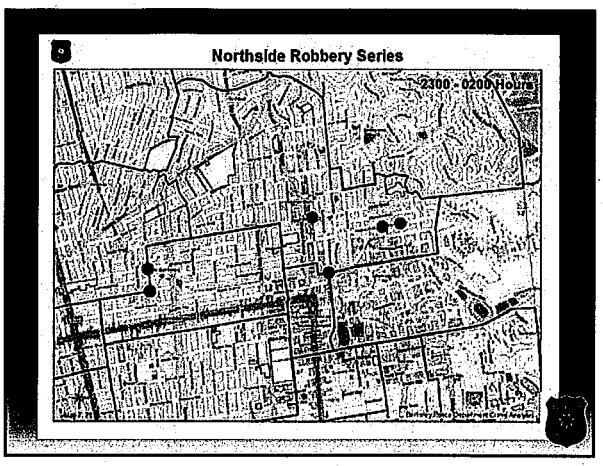


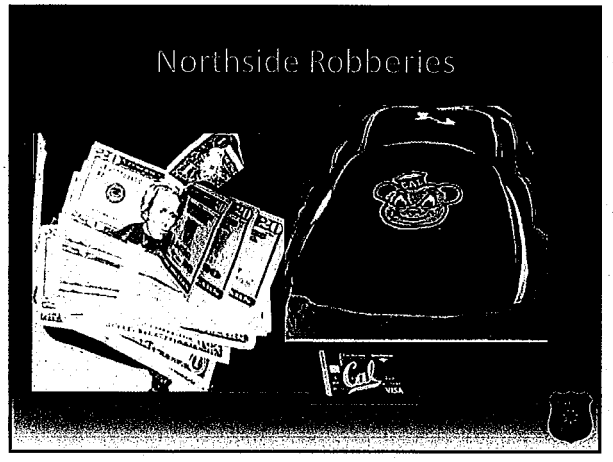



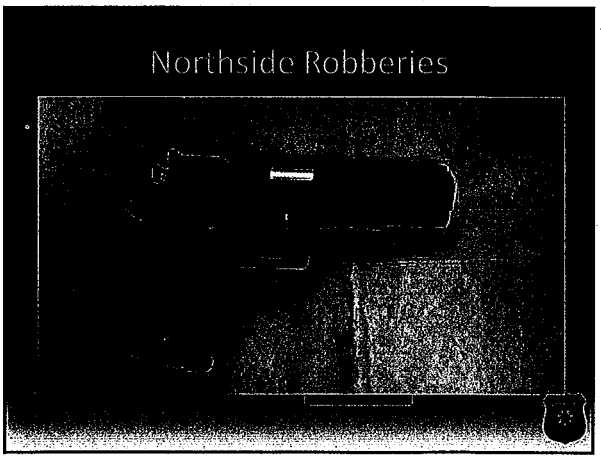

## Personal Safety Measures

- Avoid walking alone, when possible
- Be aware of your surroundings.
- Trust your instincts! If you feel someone's behavior is suspicious, take action. Turn around, retrace your path to a public place and other people; call police or take another route.
- Keep your cel phone or other electronic device out of sight .
- If you are a victim of robbery, do not resist. Be a good witness.
- Use your phone's tracking and security features.


Crime Analysis &
Response Strategies


Northside Robbery Series
2300 - 0200 Hours


Northside Robberies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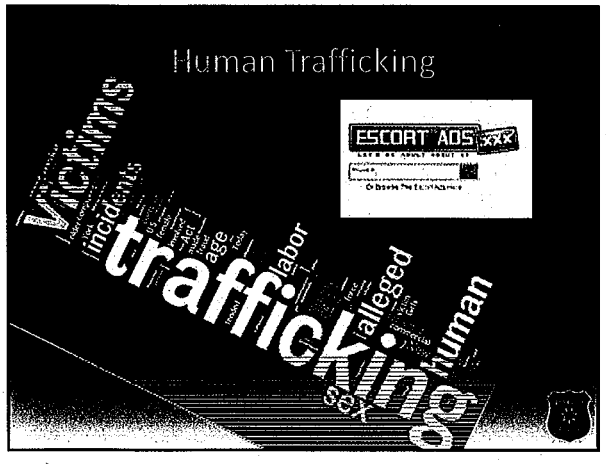
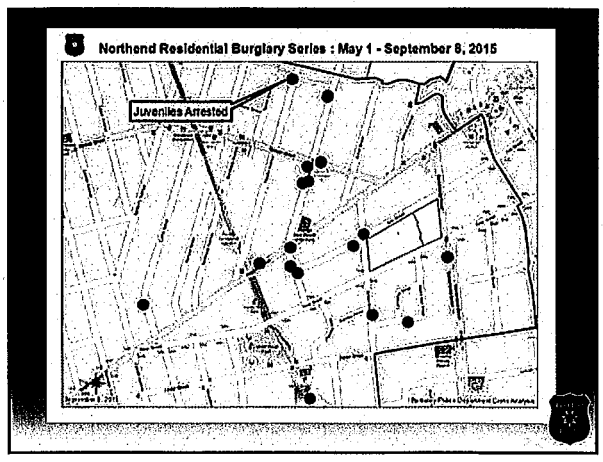
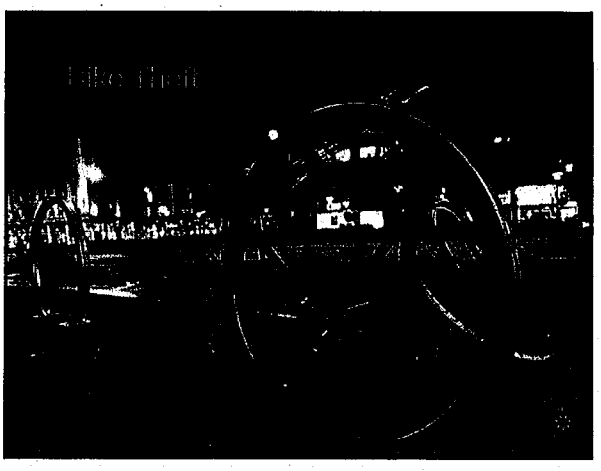
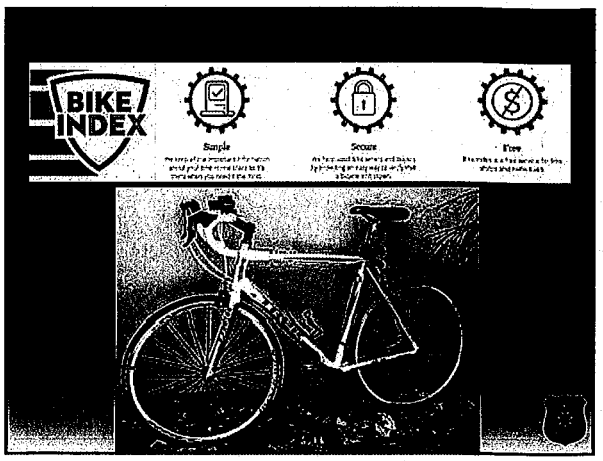
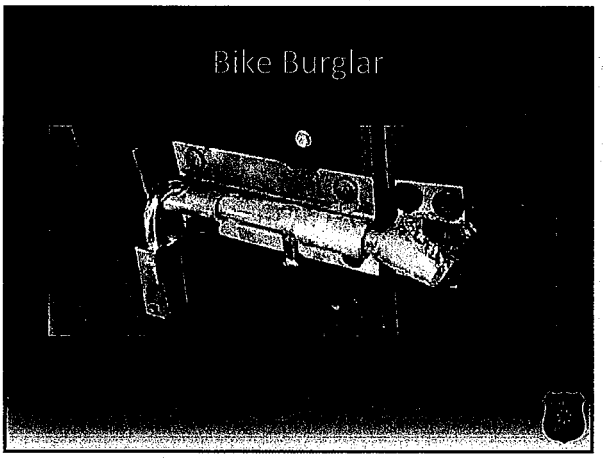
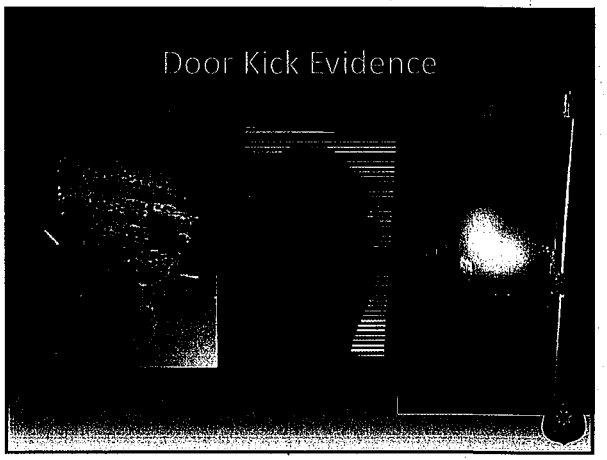

Human Trafficking
ESCORT ADS
victims
incidents
trafficking
labor
alleged
human
sex

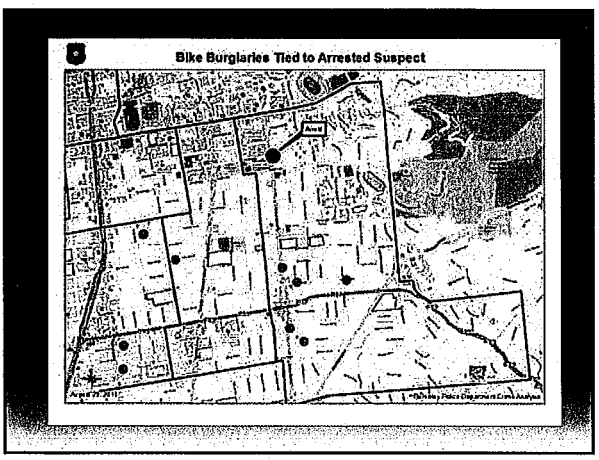

Northend Residential Burglary Series : May 1 - September 8, 2015
Juveniles Arrested

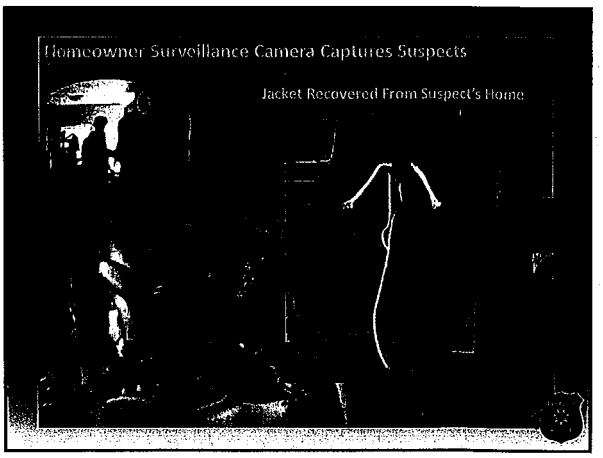

Bike Theft

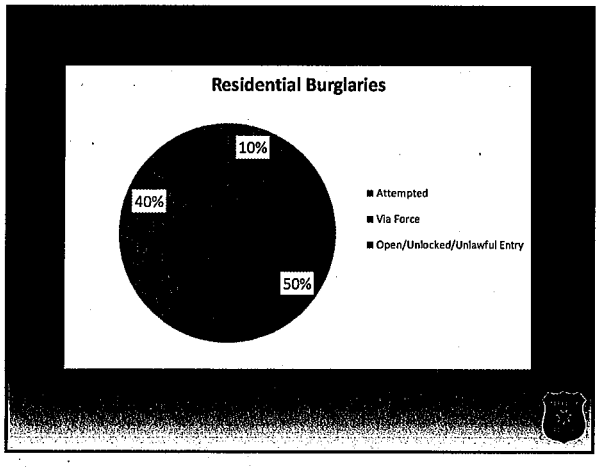

BIKE INDEX
Simple
Secure
Free

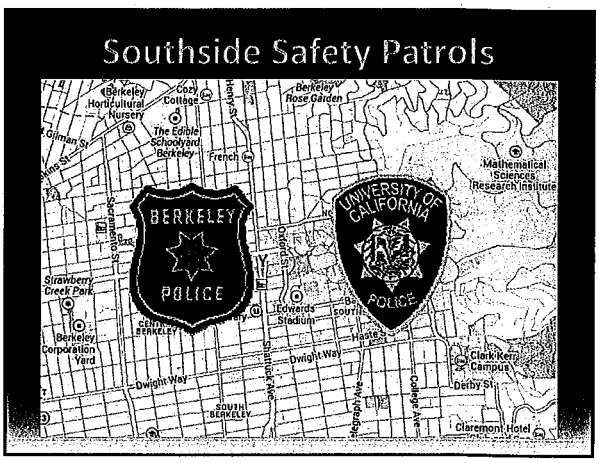

Bike Burglar

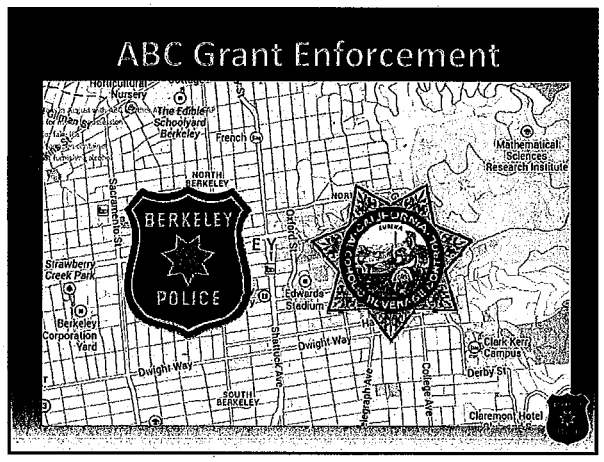

Door Kick Evidence

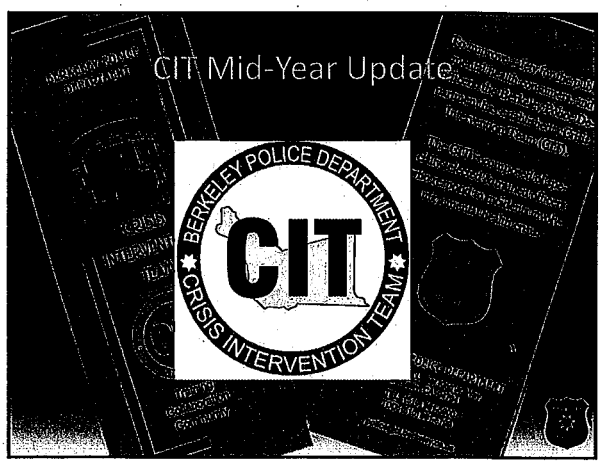

Bike Burglaries Tied to Arrested Suspect


Homeowner Surveillance Camera Captures Suspects
Jacket Recovered From Suspect's Home




CIT Training Update

25% sworn personnel

21% of Dispatchers

Newly Trained CIT Personnel:

6 Officers

1 Sergeant

2 Dispatchers

Questions

COMMUNICATION No. 4160

Received by PRC
SEP 21 2015

# POLICY COMPLAINT FORM

PRC POLICY CASE #

**Police Review Commission**
1947 Center Street, 3rd Floor, Berkeley, CA 94704
Website: http://www.ci.berkeley.ca.us/prc
E-mail: prc@ci.berkeley.ca.us
Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received 9-21-15

1

Name of Complainant: PITCHER (Last) STEPHEN (First) (Middle)

Home Address: 2124 1/2 PRINCE (Street) BERKELEY (City) (State) 94705 (Zip)

Home Phone: 510.845.3965 Alt Phone:

E-mail address: pitchbat@gmail.com

Occupation: Unemployed Gender: Age:

Ethnicity (For statistical purposes only):

- ☐ Asian
- ☐ Black
- ☒ Caucasian
- ☐ Hispanic/Latino
- ☐ Multiethnic:
- ☒ Other:

2

Please identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

Arresting bicyclists on the 'Bicycle Boulevard' Milvia & Parker

3

Please provide a factual description of the incident that forms the basis of your complaint. Please be specific and include what transpired, and how the incident ended.

Location of Incident (*if applicable*)

Date & Time of Incident (*if applicable*) [It occurred several weeks ago. I sent in the forms, so I don't have the exact dates.] I was arrested — and will be fined $600, for riding 10 mph or less through one of the dozen stop signs on the city-designated Bicycle Boulevard (It happened twice in one week.

Revised 1-13-15

4 What changes to BPD policy, practice, or procedure would you propose?

If the BPD needs money so badly, I would suggest they adopt another approach than preying on elderly bicyclists harmlessly traversing a "Bicycle Boulevard." Perhaps they could have a fashion show?

5 Is there any additional information you can provide the PRC about your complaint?

There is no place for bicyclers in this society - we are totally (traffic-wise) marginalized. Yet bicyclers do the least harm to the planet, among means of conveyance. Motorists hate us, but a lot of us are trying to be respectful of them

6 **VERIFICATION**

***I hereby certify that, to the best of my knowledge, the statements made herein are true.***

Signature of Complainant

9/11/15
Date signed

7 **How did you hear about Berkeley's Police Review Commission?**

- ☑ Internet
- ☐ Publication: _____
- ☐ Referral: _____
- ☐ Other: _____

***For Office Use Only***

Complaint Received By _____

**Lee, Katherine**

**From:** Martinez, Maritza
**Sent:** Wednesday, October 14, 2015 9:06 AM
**To:** Lee, Katherine
**Subject:** FW: Stephen Pitcher Policy Complaint

**From:** Stephen Pitcher [mailto:pitchbat@gmail.com]
**Sent:** Tuesday, October 13, 2015 9:49 PM
**To:** PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>
**Subject:** Stephen Pitcher Policy Complaint

Hello. I was told that my Policy Complaint would be addressed at the meeting on Wednesday October 14. I fully intended to be there, but I have an important rehearsal at that time and can't get out of it. Here are a few additional considerations I would have mentioned orally had I been able to attend:

—In the **eighteen** blocks (roughly 1 mile) between University Avenue and the termination of Milvia at Ashby, there are **twelve** stop signs. There is one stretch in which there is a stop sign **every block.** As is usual in the case of these so-called "bicycle boulevards," the bicyclist is the last element given consideration. The arrangement is designed entirely for the convenience of motorists, who hate having bicyclists on Shattuck. In any case, with 12 stop signs in 18 blocks, expecting a bicyclist to stop at every single one of them is preposterous. Both times I was being ticketed, bicyclists sailed through the very stop sign for which I was being cited, without even pausing. In all the years I've been riding on Milvia, where there is almost no automotive traffic, I've never seen a bicyclist stop at a stop sign. And I don't think their failure to stop threatened anyone in any way, at any time.

—There are barricades at Milvia and Dwight, south of which minimal traffic becomes pretty much zero traffic. It is there that a bicyclist really feels free to just check both ways at each stop sign and then go on through. (Both times I was cited, the only other vehicle on the road was the police officer's.) I was cited both times at Parker and Milvia, the ***very first*** street south of the barricades, where the officers could be sure a bicyclist would start feeling secure in passing through the stop signs. It was about as obvious a stake-out as it is possible to have.

—In designating a street a "bicycle boulevard" and barricading it from automotive traffic, particularly when it's a street right between two extremely busy and narrow main arterials, the City has created a veritable magnet for bicyclists. We all take (in my case, *took*) Milvia for a dream come true: no cars! We're not in their way, they're not in our way: safe at last! So it gets heavily used by cyclists. When police officers are detailed to go out and ticket bicyclists on this idyllic stretch of city street it is tantamount to stocking a pond with fish and then getting out your fishing pole and capitalizing on the abundance you've created. First you lure the bicyclists onto this road, then once you've got them there it's a walk in the park to ticket one after another of them (or, in my case, the same one twice) as they understandably fail to stop at every one of the dozen stop signs along the way. It was a shameless and immoral use of police time. As I said in my complaint, if the police department needs money that bad, they should have a fashion show.

—Both officers were unpleasant. I realize that they were acting on instruction, but what they were doing was inexcusable. The sole function of the police is to protect the public and to promote safety. Going through a stop sign on a completely uninhabited "bicycle boulevard" at 10 mph is not the remotest threat either to the public or to anyone's safety. Both officers were intelligent-seeming, and knew perfectly well that what they were doing could not remotely be described as a legitimate police function. I would have expected them to be at least a bit sympathetic when, for example, in the first instance I asked the officer if he thought it was reasonable to designate as a bicycle boulevard a street that had stop signs on every block. But he just looked at me coldly and said "Yes." End of discussion. If Berkeley is attempting to cultivate a sense of rapport between its police and its citizenry, these men, who personified the sort of complete power which cannot be questioned and need not even pretend to be reasonable, are not advancing that cause.

I could go on at length, because this pair of arrests has me seething, but I'll cut it off. I am a 61-year-old who has been a tax-paying member of the workforce since I was 17. I have never owned a car, and while I loathe boasting, I do think that attacking people who are among the few not actively damaging the environment, and charging unemployed people like myself $238 for riding 10 mph through a stop sign on an abandoned street, and being snotty about it too, is just not the kind of behavior i would want my tax dollars to support.

My approval rating of the Berkeley Police has just gotten about as low as it can get.

Thank you.

Stephen Pitcher

**Harris, Cynthia**

**From:** Harris, Cynthia
**Sent:** Monday, November 16, 2015 4:33 PM
**To:** Harris, Cynthia

## Suspicious Activity Reports

On 12/22/14, a well-known Rabbi at a Jewish synagogue in Berkeley awoke to find a headless mannequin propped up on the outside the front door of his residence. The head of the mannequin was placed away from the body at the front steps of the home. The head of the mannequin had a mustache and beard drawn upon it. In addition to the mannequin, a menorah decoration that was affixed to the Rabbi's car was vandalized and broken glass was placed underneath car's tires. The case is being investigated as a hate crime.

On 01/22/15, BPD personnel served a search warrant in the 2000 block of Blake Street in Berkeley, CA. BPD personnel recovered a large amount of narcotics for sales and evidence of identity theft, including a falsified US Navy military document made using a victim's identity with the suspects picture uploaded onto the document.

# RESEARCH AGREEMENT

This Research Agreement (hereinafter referred to as "the Agreement") is between the CITY OF BERKELEY, a municipal corporation (hereinafter referred to as "the City") on behalf of the **Berkeley** Police Department (hereinafter referred to as "**BPD**"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of its Los Angeles Campus (hereinafter referred to as "UCLA"), hereinafter collectively referred to as "the Parties."

The Parties confirm that the Agreement is effective as of this 30TH day of SEPTEMBER, 2015 (hereinafter referred to as Effective Date).

## RECITALS

WHEREAS UCLA has developed the Center for Policing Equity (hereinafter referred to as "CPE"), a research institute designed to advance the state of knowledge in the field of law enforcement on the sociological and psychological dynamics in law enforcement agencies and in police/community relations; and

WHEREAS BPD has a need for expert services with regard to the work outlined in Section 2 of this Agreement, and at the same time desires to support research at UCLA to advance the accumulation of unique data in the field and to use the research to improve police practices and police/community relations in the City of Berkeley;

THEREFORE, the Parties agree that UCLA, through CPE, will conduct the specific research as detailed in Section 2 of this Agreement, and the following:

## 1. TERM AND TERMINATION

The obligations under the Agreement shall commence **on** 30 SEPTEMBER, **2015** and shall continue for two years or until terminated by either party in accordance with the terms of the Agreement. Either party may terminate the Agreement at any time upon sixty (60) days' written notice to the other party, in accordance with the provisions of Section 10.

Notwithstanding the foregoing, the rights and obligations in this Agreement as described in (i) Article 8 [Publication], and (ii) Article 15 [No Third Party Rights] shall survive even upon the termination of this Agreement.

## 2. SCOPE OF WORK

UCLA, through CPE, will conduct the following tasks:

1. Data analyses of 12-months worth of data on pedestrian and vehicle stops using BPD's current data collection practices
2. Analyses of current policies and procedures related to pedestrian and vehicle stops
3. Recommendations for future data collection, analyses, and reporting standards

## 3. DELIVERABLES

Annual updates will be delivered in person or by way of a written report provided to BPD, unless requested otherwise by either party.

## 4. CONSIDERATION

UCLA undertakes these commitments in exchange for receiving data listed in Section 5, below, which are understood to be valuable in the advancement of research into law enforcement and community standards.

## 5. DATA

The City, through BPD, agrees to provide to CPE the following records and information covering a twelve-month period:

1. Vehicle Stop Data
2. Pedestrian Stop Data
3. Policy and Secondary research data. This will be mutually agreed upon by the BPD and CPE as to what will be provided. Some examples of data that may or may not be requested are listed below.
    i. Deployment data
    ii. Calls for service data
    iii. Aggregate data regarding external complaints
    iv. Departmental policies
    v. Aggregate departmental crime statistics

*5.1 Treatment of Confidential Data*

No transfer of confidential data is anticipated or called for in the Agreement. However, if either party inadvertently discloses Confidential Data to the other party, the disclosing party will designate this information as confidential by appropriate legend or instruction established
by BPD and UCLA shall:

(a) Use the same standards of care and secrecy of the Confidential Data as specified in similar agreements it has with other law enforcement agencies.

(b) Use the Confidential Data only to accomplish the purposes of the Agreement and subject to management and audit review by CITY.

*5.2 Cooperation in Resisting Disclosure of Confidential Data*

The Parties further acknowledge and agree that they will each cooperate with the other party to secure the confidentiality of all confidential data that the City or any of its officers or employees inadvertently provides to CPE researchers. UCLA will object to any attempt by a third party to obtain any confidential City data from UCLA, including demands or requests made by way of subpoena or public record request and will give notice to the City within 72 hours of any request for such data in order to allow the City to assert any objections to production on its own behalf and to otherwise participate in any proceeding concerning the production of Confidential Data.

## 6. COOPERATION IN PROVISION OF ACCESS TO DATA

The Parties hereby commit to work together, in good faith, to provide CPE researchers access to the records described in section **5,** above.

The Parties acknowledge that without provision of the data as described in Section 5, above, CPE will not be able to conduct the scope of research specified in section 2 of the Agreement.

## 7. DEDICATED LIAISON

The City shall designate a manager with the authority to communicate directly with the Chief of Police, to act as a liaison with CPE researchers. The liaison will coordinate research efforts between BPD and CPE researchers, and assist the researchers in understanding BPD. BPD will consult with Executive Director of CPE prior to appointing this liaison in order to receive CPE's input on the skills and knowledge base a candidate for this position ought to possess.

## 8. PUBLICATION, PUBLICITY AND OWNERSHIP OF DATA

*8.1 Publicity:* The Parties may publicly acknowledge the substance of this Agreement. The Parties further agree to treat this research and each other's participation in this research with discretion. Specifically, the Parties agree that they will communicate with each other when a press query is made with regard to the research described in the Agreement, and shall, to the extent permissible, consult with one another before making statements to the press regarding the research. Neither party will use the name, trade name, trademark or other designation of the other party in connection with any products, promotion, advertising, press release, or publicity without the prior written permission of the other party.

*8.2 Exclusive Authority Over Publication and Publication Contents:* CPE shall be free to publish the results of its research in its exclusive discretion and as it sees fit without approval of or interference by the City or anyone associated with the City. Prospective publications will be subject only to the requirements of the Agreement and state and federal law governing the privacy of any data used in its research.

*8.3 The City's Right to Advance Notice of Research Findings:*

Notwithstanding the foregoing, CPE shall give the City no less than 45 calendar days' notice prior to submitting any of its research findings for publication. Such notice shall be in writing in accordance with the provisions of Section 10 below and will be in the form of the proposed publication itself.

This written report will not be released by the City to the public or the press within this 45-day review period without written authorization from UCLA. The initial study to be published from research obtained under this Agreement shall have either Phillip Atiba Goff or Tracie Keesee as authors, but authorship of results of the research will be determined in accordance with academic standards and custom. Proper acknowledgment will be made for the contributions of each party to the research results being published.

**9. [THIS SECTION INTENTIONALLY DELETED]**

**10. NOTICES.**
Any notice, consent, or correspondence shall be effective only in writing personally delivered with an executed acknowledgement of receipt or deposited in the US mail, certified, postage prepaid and addressed as follows:

To UCLA:

Phillip Atiba Goff
President, CPE
UCLA Psychology Department
1285 Franz Hall
Box 951563
Los Angeles, CA 90095

With a Copy To: ~~Kim Duiker~~ Miesha Bailey
Contract and Grant Officer
Office of Contract and Grant Administration
~~11000 Kinross Avenue, Suite 102~~ 11000 Kinross Avenue, Suite 211
Box 951406
Los Angeles, CA 90095-1406

INITIAL HERE

To City:

Michael Meehan
Chief of Police
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

11. **INDEPENDENT CONTRACTOR**

It is understood and agreed that UCLA and its researchers, in the performance of the work and services agreed to be performed by UCLA, shall act as and be an independent contractor and not an agent or employee of the City; and as an independent contractor, UCLA shall obtain no rights to retirement benefits or other benefits which accrue to the City's employees, and UCLA hereby expressly waives any claim it may have to any such rights.

Neither UCLA nor anyone employed by UCLA will represent, act, or purport to act as, or be deemed to be an agent, representative, or employee of the City. Neither the City, nor anyone employed by the City, will represent, act, or purport to act as, or be deemed to be, an agent, representative or employee of UCLA. Neither the City nor UCLA has authority to make any statement, representation, or commitment of any kind or to take any action binding upon the other party without the other party's prior written authorization.

12. **COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF), or photocopied signatures of the Parties will have the same legal validity as original signatures.

13 **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior written or oral agreements or understandings with respect thereto.

14. **MODIFICATIONS; WAIVER**

No amendment or modification of this Agreement will be valid or binding upon the Parties unless made in writing and signed by each party. Failure by a party to enforce any rights under this Agreement will not be construed as a waiver of such rights nor will a waiver by a party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

15. **NO THIRD PARTY RIGHTS**

This Agreement is solely for the benefit of UCLA and the City. This Agreement is not intended to and does not create any cause of action, claim, defense or other right in favor of any party who is not a signatory to this Agreement.

16. **ASSIGNABILITY**

The Parties agree that the expertise and experience of CPE are material considerations for this Agreement. UCLA shall not assign or transfer any interest in this Agreement nor the performance of any of UCLA's obligations hereunder, without the prior written consent of the

City, and any attempt by UCLA to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the dates indicated below.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of UCLA:

By: _____ 10-6-16

~~Kim Duiker~~ Miesha Bailey
Contract and Grant Officer
Office of Contract and Grant Administration

INITIAL M HERE

CITY OF BERKELEY:

By: _____ For DEE WILLIAMS-RIDLEY

Dee Williams-Ridley
Interim City Manager
City of Berkeley

Registered by:

Ann-Marie Hogan 10/22/15
City Auditor

ATTEST FOR THE CITY OF BERKELEY

_____
DEPUTY CITY CLERK

**From:** bob tom [mailto:cranberrysauce23@gmail.com]
**Sent:** Friday, November 13, 2015 3:28 PM
**Cc:** Bob Meola <bobmeola@mindspring.com>; Brenman, Eric <EBrenman@ci.berkeley.ca.us>; Worthington, Kriss <KWorthington@ci.berkeley.ca.us>; Capitelli, Laurie <LCapitelli@ci.berkeley.ca.us>; Maio, Linda <LMaio@ci.berkeley.ca.us>; Berkeley Mayor's Office <Mayor@ci.berkeley.ca.us>; PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>; SElglstrand@cityofberkeley.info; Wengraf, Susan <SWengraf@ci.berkeley.ca.us>
**Subject:** Re: [oaklandprivacyworkinggroup] [stop urban shield] Fwd: OccupyForum FIELD TRIP to COPWATCH // Monday, November 2nd from 7 pm to 9 pm at 2022 Blake Street in Berkeley

Dear Berkeley City Council, and Berkeley Peace and Justice Commission,

Hello, my name is Blair Beekman. This is my second, and slightly longer letter. I live down here in San Jose, trying to be a good utilitarian student, trying to talk about the basic ideas, of open and transparent government, with issues like the new UAS/Surveillance Drone, which has not gone well, and equal access, and infra-structure issues, and how to make sure to have a good democratic process, where the whole community, is allowed to be a part of. Not just rushed through the paces, of new streamlining procedures, both the city of San Jose, and the FCC, are offering. It is difficult work. I am at the point, in learning to ask them, to stop working projects, in the name of greed, and trying to hoodwink the community, and work towards the ideas, of good reasoning.

What I am working on, brought myself, to learn about the Alameda County, Stingray cell-phone surveillance program. They might actually, start working on creating a policy, for the public, to understand what they are doing. This has led myself to meeting some people, who are working on issues of NCRIC, UASI, Urban Shield, and de-militarization, of the Berkeley Policy Department.

I am trying to take from what I learned from the mid-October, Berkeley PRC meeting, and make the best, of the three PRC proposals, they have offered. At face value, the three proposals, continuing Urban Shield, creating an outreach, for police to give their feelings on Urban Shield, and possibly creating a study group, to study de-militarization, seem a little hollow, to a deep but simple idea, that I think, is working itself, politely around. There are simple thoughts, that can go through most people of the community, if not the country. How do we separate local communities, from a war our federal government, has created. A war that they have created, to work for certain ideas and causes, that have possibly brought our country, to our lowest point, in our 239 year history.

In their three proposals, the Berkeley PRC idea, of vaguely offering to create some form of future study group, to study de-militarization issues, for the Berkeley Police Department, seemed half-hearted. I figured I should write, to try to bring focus to the idea, of how to start to this study group, soon. To ask, what topics, should be talked about and studied.

I think we should create a study group, to not only look into ways, into how to de-militarize, the BPD, but have those conversations, lead into ways, to separate the city of Berkeley, from NCRIC, UASI, and Urban Shield.

I think if we start with the ideas, of a study group, that can talk about ways, to distance ourselves, from NCRIC, UASI, it would lead to ideas, about de-militarization, of the police, and to possibly end, being a part of Urban Shield.

There is a simpleness, in this idea, that I think can work. I think people of the community, Berkeley commissions, and the city council of Berkeley itself, have had established ideas, for a long time now, of how to separate from NICRIC and UASI. Also, basic ideas, in how to de-militarize the police, and end at least, the police role, in Urban Shield.

I think a year long study group, with the purpose, of working on the ways of creating distance and space, for how we rely on NCRIC and UASI, would easily lead to ideas, of how to de-militarize, the BPD, and possibly leaving Urban Shield.

The city of Berkeley has created the great idea, to have an open city council vote and resolution process, each November, if they want to keep NCRIC, Urban Shield and UASI. I hope the time has come, with a year long study group, we can work on exact ways, the community and the city, want to create distance, from these programs.

It could create, a very healing atmosphere, in many ways and on many levels.

By having a focused study group, the city of Berkeley, can work on as a small committee, we have started with the PRC, but an open process, should be available, for the Peace and Justice commission, to somehow be involved. But to keep it simple, for now, asking the PRC, and inviting everyone, committees, council, the community, and the police, to give input, to the PRC, should make some interesting meetings, throughout the year.

All would come up, with goals of peace, and good reasoning, that I feel has been well established, between yourselves working on these things, and people you know, working on these things, in the community. The peaceful thoughts and ideas of people, throughout this world, in how to change the relationship, in how we have been living, of creating a world of war, into creating a world, more in the name of peace, social justice, and the civil and constitutional ideas and protections, that has worked towards our better ideals. Peace, love, and a form of the constitution, that tends to give people happiness, when working on it. Ideas and ideals, the creators of 9/11/01, here and abroad, have seemed specifically to ask, to end. Or took for granted, to how important, the above understandings, of a peaceful world, are.

As the song goes, there is a time of war, and a time of peace. Hopefully this can be a time of peace. The people of war, have been expecting this. Hopefully in our building, it can be a time, to ask them, to leave, or ask them, to learn to build a thought process, based on the ideas of peace, and the meaning of a good constitution. By taking steps now, we can even be prepared for the possible next continual war, now an isis war, that may be moving into Syria. We can be prepared to offer peace, instead of shrugging our shoulders and saying, Oh well, its national security issue, I have to give into it.

The next year, would be a process, of creating a study group, of ideas that are already established, by most intelligent people of city government and the community, but has not been brought together, and comprehended, for the whole of Berkeley, to work towards, as a whole community. A simple change, in the relationship the city of Berkeley has with NCRIC and UASI. A change, in thinking of how people how well people used to work, for peace, social

justice, and basic civil and constitutional protections, ideas, and understandings, before 9/11/01, a change to work, for a peaceful future, a way to leave, and create distance, for a war, that was created. A war that could have effects, into the next century. It would be nice, to start working on peaceful goals, now.

It would be a matter of the PRC, to filter ideas to work on, in monthly, or bi-monthly, community meetings. A set list of ideas and resolutions, for the future of Berkeley, ready to be put forth, next November 2016, in the yearly council voting of the national security bureaucracies, that we should be working to distance ourselves from. From a war, and continuing wars, we should be distancing ourselves from. It would be a formal return to a system, we have all known and have been familiar with, in our younger days. It would be also be asking the federal government, to end their fighting, and warfare.To end a system, of thinking and fighting, that is a complete and utter disgrace.

To create a more formal distance, from these two national security bureaucracies. It is my hope we can be working towards the goal, of trying to leave war, and trying to create a world for peace. I hope this is the time, we can start again, to work again, and remember a past, about fifteen years now, before 9/11/01, when people, and people in government, were working hard and regularly, to build a country,(and a world), a government and government bureaucracies, in the name of peace, social justice, and good civil and constitutional ideas, and protections.

I think a year long study group, and year long discussions, between the PRC, the Peace and Justice Committee, and with the groups, the Oakland Privacy Working Group, Stop Urban Shield, and others, along with all the other voices, and persons, from the community area, including you on the city council and the police, would naturally create ideas, of how we can separate and distance ourselves, from government bureaucracies, like NCRIC, and UASI, I feel this would lead to natural and easy conversations, on ways to demilitarize the Berkeley Police, and end Urban Shield.

It would offer a good framework, for a good public study session, on ways to finally start to leave, the monster that was created on 9/11/01. I think a lot of people, in the local community, and throughout the country, would like to find ways, to continue building a constitutional system, and a constitutional system, with good civil and constitutional ideas and protections, based upon the average person, not a corporate charter system, or a government that serves corporations, before people.

It seems a u.s. constitution, that is meant to serve an average person, can actually be better in helping and serving more people, that a corporate charter form, of the u.s. constitution can, which can only serve people, in a limited capacity.

I hope this can be a good idea, for your city. I feared it may be so good, it has put your city government, asleep, a little. I think it is sad, the Peace and Justice Commission, has put off meeting until December 7. To be formal again, I think, the P&J, missed a very important chance, to create a sense of community, and community organizing, for your upcoming council meetings Nov.17 and Dec. 1.

I have presented yourselves with a year long plan, that can ask and answer safely, in the fairly neutral space, of a committee meeting setting, how to proceed with the future of Berkeley,

and their relationships, to bureaucracies of a war, and warfare, we are learning, to separate, and hopefully create distance from. NCRIC and UASI. The comfort and healing this can offer to a community, to talk about these issues, as an honest open community, together, could have some important examples, for ideas on how to live more, in peace, and how to work for a more peaceful future.

The Berkeley Police Relations Commission, has offered what seems an unfocused proposal idea, of some vague studying of de-militarization ideas, for the Berkeley Police. I have offered to put this into a little more focus, and to describe the importance, and the readiness, I think there can be, that a lot of people of this community, average people, city government and politicans, alike, know, know what to look for, these days, and how to make important changes, to still have a relationship with our national security bureaucracies, NCRIC and UASI, but to keep them at more of a distance, to respect our days, in a world before 9/11/01, and the idea of continual war, and to possibly make a statement, on working towards a world, of creating peace.

I hope we can create a study group, with the intention, of trying to leave what was created, on 9/11/01. No matter what your thinking was, or your ideas were, at the time. It is my hope we have learned, better forms of thinking, and learning ideas of how to create a more peaceful world, since then. I think it is important, to leave certain parts of our thinking, from then. I think it is and will be important, to work on and to leave, certain parts of our collective thinking, in the past. There is a way to work on ideas, to have dialogue and conversations, without resorting to war, its technologies, and their corporations,

I would like to hope, that you will be prepared, as a city council, and a city government, this Nov 17, and Dec 1, when the public, will ask you ideas that can be worked on, and taken on immediately. A year long process is nice to think of. To be prepared as a community together, to make important decisions, for next November, is thoughtful and important, in its study. But there should be many ideas, you are ready to work on, and can work on, immediately.

I work with groups like the Oakland Privacy Working Group. I think they are trying to create, a more thoughtful world. I hope this is the time, to start working on creating an honest distance, from two national security bureaucracies, and a war situation, that could have be thought about, talked about, and worked on, in much more peaceful and diplomatic terms.

Sincerely,

Blair Beekman

There is a website, listed below, from an old e-mail I am using, for this letter. You are probably familiar with the Copwatch.There is one where I live, in San Jose. They are an important group, and this might be an interesting video. I am sorry for my informalness. I suppose this would fall under, de-militarization study and work. I hope the video is interesting.

**Website: Berkeleycopwatch.org**

**COPWATCH VIDEO: These Streets Are Watching: www.youtube.com/watch?v=GKeM6zWfAjs**

**Martinez, Maritza**

**From:** Kevin Shao <kevin.j.shao@gmail.com>
**Sent:** Friday, November 13, 2015 10:00 PM
**To:** PRC (Police Review Commission)
**Subject:** Extremely rude police officer

I am extremely disappointed in the police officer's conduct during a non-emergency phone call I recently placed. I was concerned about a crack in my ceiling and so I called to ask about any measures that can be taken in order to prevent a similar situation in which six students died from a balcony collapse during the summer. The officer hung up on me after telling me there was nothing she could do and she was upset that I said a swear word (not targeted at her).

Regards,
Kevin

**Lee, Katherine**

**From:** Lee, Katherine
**Sent:** Tuesday, November 17, 2015 5:08 PM
**To:** Lee, Katherine
**Subject:** PRC Investigative Report
**Attachments:** PRC Investigative Report re Dec 6 2014 Protests corrected.pdf

Dear Commissioners,

Thought you might want a version of the report that doesn't have the Council's draft agenda numbering on it.

Also, you will recall that you last discussed the report at your October 21, 2015 meeting. You did not thereafter have an opportunity to see a very "clean" draft before it was submitted into the Council agenda process. You gave me the authority to clean up typographical and grammar errors, and to re-insert the "Get 'um running" quote in the findings. You will find it in the Findings Section, at the bottom of page 6 to the top of p. 7; I added footnote 9 for context. (And Chair Bernstein approved of this.)

I wanted to let you know of other changes I made:

- In the Discussion section, I added footnote 75 on p. 14 to explain the difference between crowd management and crowd control. In reviewing the report, Ms. Thomas and Mr. Norris independently raised the question of whether the average civilian understands the distinction, and I thought that was a good point.
- In the Discussion Section, p. 16, first paragraph, last sentence: You approved two versions of this sentence, looking at the Roberts/Bernstein revision and then the Lippman revision. I went with the former, which is more assertive. (. . . the PRC "recommends" vs. the PRC "believes there should be" . . .)
- I discovered that the sole paragraph about After Action Reports in the Discussion section was inconsistent with the Recommendation about After Action Reports. The Discussion called for having each officer who uses force in crowd management to write an individual report describing the force used and why. The Recommendation (p. 29) is not that specific. After consulting with Chair Bernstein, who wrote the Discussion paragraph, she revised it. I took the opportunity to move it from the end of the Less-Lethal subsection into its own subsection called "Reporting Use of Force"; it appears on page 19.
- The Mutual Aid recommendation was corrected, thanks to Commissioner Lippman noticing that some words were missing. This was my error, which was also made on the Minutes of the October 8 meeting, which were approved. You will see it is on your November 18 agenda for correction.

Sincerely,
Kathy

**Katherine J. Lee**
**Police Review Commission Officer**
**City of Berkeley**
**510.981.4960**

Office of the City Manager

ACTION CALENDAR
December 1, 2015

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, Interim City Manager

Submitted by: Michael K. Meehan, Chief of Police

Subject: Response to PRC Report on BPD Response to December 6 Protests, Revision of Police Crowd Management Policies

## RECOMMENDATION

Direct the City Manager to have the Berkeley Police Department collaborate with the Police Review Commission to further develop mutually agreed upon revisions to the Berkeley Police Department's policies and procedures regarding response to protest activity and to report back to the Council within 180 days for an update.

## FISCAL IMPACTS OF RECOMMENDATION

None.

## CURRENT SITUATION AND ITS EFFECTS

On June 9, 2014, the Berkeley Police Department published a Post Incident Review of the protests and police response of December 6 & 7, 2014 in Berkeley. Since that time the Berkeley Police Department has worked with the Berkeley Police Review Commission to support their efforts to review the same events and to produce a report to the City Council titled Investigation into the Police Department Response to Protests on December 6, 2014.

Reflecting the universal desire to minimize conflict and ensure peaceful and safe first amendment protests in Berkeley, many of the PRC recommendations are similar to those found in the BPD Post Incident Review. In addition, the BPD supported the work of the Police Review Commission throughout the entirety of their review of the incidents of December 6 & 7 including having a team attend every Police Review Commission meeting where protest response was discussed.

There is substantial agreement between BPD and the PRC's recommendations. The two entities agree that improvements can be made in the following areas"

- Radio Interoperability
- Public Communication
- Social Media
- Protest Negotiations

- Tactical Command
- Mission Clarity
- Deployment of Resources
- Crowd Management
- Joint Police & Fire Teams
- Skirmish Lines
- Medical Aid
- After-Action Reporting
- Crowd Management Training

Continued collaboration between the Berkeley Police Department and the Police Review Commission will result in a modern, comprehensive crowd management policy for Berkeley.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Michael K. Meehan, Chief of Police, 981-5700

Additional Information:

Berkeley Police Department Post Incident Review:
http://www.cityofberkeley.info/police/BPDPostIncidentReview/

Police Review Commission

ACTION CALENDAR
December 1, 2015

To: Honorable Mayor and Members of the City Council

From: Police Review Commission

Submitted by: Alison Bernstein, Chairperson, Police Review Commission

Subject: Report of Investigation Into the Police Department Response to Protests on December 6, 2014

## RECOMMENDATIONS

1) Accept the Police Review Commission's investigative report into the Berkeley Police Department's response to the protests of December 6, 2014; and
2) Refer the report to the City Manager for implementation of the recommendations.

## SUMMARY

At the City Council's request, the Police Review Commission (PRC) undertook an investigation of the Police Department's actions on the night of December 6, 2014, the first night of demonstrations in Berkeley spurred by the police shooting deaths of Black men in Missouri and New York. The attached investigative report presents the PRC's findings of what occurred on the streets of Berkeley that night, analyzes those events and makes recommendations for improving BPD's readiness and appropriateness of its response to future such protests.

## FISCAL IMPACTS OF RECOMMENDATION

Unknown at this time.

## BACKGROUND

Across the country in late 2014, public outcry erupted over several cases of seemingly unjustified killings of Black men at the hands of law enforcement officers. Protests over these deaths began in Berkeley on December 6 and continued over the next several nights. The first night, however, drew the largest crowds, and was notable for the amount of force the Berkeley police and mutual aid responders used, including the use of batons and deployment of CS gas and other less-lethal weapons.

The community's reaction was swift and vociferous. Subsequently, at its February 10, 2015 meeting, the City Council took several actions related to the police response, including requesting that the PRC initiate an investigation into the BPD's actions on December 6, 2014. The Council specifically asked that the PRC address the appropriateness of using of tear gas and other non-lethal munitions, and the use of baton strikes to disperse the crowd. The Council asked the PRC to make

recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control and the use of force in crowd control, and mutual aid in First Amendment activity.

The attached report explains the PRC's methodology and presents its findings about what occurred on December 6, 2014. An overarching critique is that the BPD focused too heavily on crowd control, which involves responding with such strategies as skirmish lines, kettling, arrests and use of force, as opposed to crowd management, in which non-forceful tactics are used to maintain the event's lawful activities. The report also discusses the use of batons, CS gas, and other non-lethal munitions, and the use of mutual aid responders, and then follows with 34 recommendations for strengthening policies and procedures.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CITY MANAGER

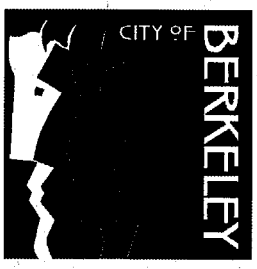
The City Manager does not concur with all of the Commission's recommendations. See companion report.

CONTACT PERSON

Katherine J. Lee, Police Review Commission Officer, Police Review Commission, 510-981-4960

Attachments:

1. PRC Report to the City Council: Investigation Into the Police Department Response to Protests on December 6, 2014




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)**
**Benjamen Bartlett**
**Jerry Javier**
**George Lippman**
**Terry Roberts**
**Ann Rogers**
**Michael Sherman**
**Ari Yampolsky**

**December 1, 2015**

## 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 PRC Investigator Beneba Thomas assisted the Commissioners in conducting their investigation and producing this report.

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# 1. 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. The peaceful resolve of the vast majority of demonstrators was undermined by violent individuals and by tactics employed by the Berkeley Police Department. The response of the BPD, 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 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.

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[1] See Appendix 1.

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.

Toward that end, Section 2 of this 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 which departments are involved. Following the Findings, the PRC offers its analysis of those events in the Discussion section (Section 3). Next, in the Recommendations section (Section 4), 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. This is followed, in Section 5, by a

Minority Report setting forth some opposing viewpoints on three recommendations.

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 13 regular meetings, from late February to late October. 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 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 2015, 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.

## 2. 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 the organizers until the day of the event and they failed to reach any of the organizers.[8] The BPD incident commander's briefing notes from December 6, 2014, regarding tactics state, "Get'um running! Stretch the crowd out so they are

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[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 (hereafter "BPD Report"), pages 1, 12.

[4] http://blacklivesmatter.com/herstory/

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

[6] BPD Report, page 15 (Mission Statement).

[7] BPD Report, page 13.

[8] BPD Report, page 13.

not a mass, but individuals."[9] 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.[10] 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.[11]

The Mutual Aid responders brought non-lethal munitions, including bean bag shotguns, CS gas, and one tactical response vehicle.[12] BPD did not inventory the non-lethal munitions brought by other jurisdictions before or after the demonstration.[13] 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.[14]

The December 6 demonstration began at approximately 5:00 p.m. with a crowd gathering on the UC Berkeley Campus.[15] As the crowd marched down Telegraph and into central Berkeley it grew in size.[16] The crowd was peaceful, walking through the streets and chanting.[17] When the crowd reached the Public Safety Building, around 6 p.m., it had grown to several hundred.[18]

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[9] BPD informed PRC staff that BPD command staff present at the briefing could not recall if these words were read at the briefing. At the very least, the statements show the mindset of the incident commander was focused on crowd control.

[10] BPD Report, page 16, paragraph 3.

[11] Chief Meehan confirmed with PRC staff that this list is accurate and complete.

[12] Hayward Police Department Special Response Unit, After Action Report – SRU Operation # 14-14, page 7 (hereafter "Hayward PD Report"); 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.

[13] BPD Report, pages 52-53.

[14] California Office of Emergency Services Law Enforcement Guide for Emergency Operations.

[15] 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.

[16] CAD Report, pages 3-4.

[17] 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.

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

Shortly after the crowd arrived at the Public Safety Building, BPD set up a skirmish line[19] across MLK at Addison to keep the crowd away from the Public Safety Building entrance and the staging area.[20] 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."[21]

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.[22] The protesters believe that BPD failed to give adequate or sufficiently audible warnings to the demonstrators to avoid the skirmish line officers' safety zone.[23] 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 6[24] and the crowd became more verbally confrontational with BPD thereafter.[25]

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.[26] BPD officers remained in front of the Public Safety Building, in a line protecting the safety of the building.[27]

As the crowd moved north towards University Avenue,[28] 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.[29] Many protesters saw this exchange and shortly thereafter the atmosphere became more confrontational wherein demonstrators became verbally confrontational with

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[19] 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.

[20] BPD Report, pages 16 – 17; CAD Report, page 6.

[21] BPD videos.

[22] 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).

[23] Moni Law, PRC Meeting, June 10, 2015.

[24] BPD Report, page 20.

[25] Moni Law, PRC Meeting, December 10, 2014.

[26] CAD Report, page 6.

[27] BPD Report, page 22, paragraph 3.

[28] BPD Report, page 20; CAD report, page 6.

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

the police and several projectiles were thrown toward the police from the north moving crowd.[30]

The projectiles thrown at the police throughout the evening included a screw driver, bricks, rocks, metal pipes and a bag of gravel.[31] At least five officers were injured, one with a dislocated shoulder.[32] After the projectiles were thrown at officers near MLK Jr. Way and Addison Street, BPD responded by firing one foam baton round[33] and rolling four smoke canisters into the crowd.[34] A protester picked up one of the smoke canisters and threw it back toward the officers.[35]

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 roles or in any way take advantage of the de facto peaceful leadership which emerged from the crowd.[36]

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.[37]

Some individuals dressed in black, with mask-covered faces, vandalized the Trader Joe's at MLK and University.[38] BPD videotaped the vandalism and destruction of Trader Joe's, but did not respond[39] or apprehend the criminals.[40] One male civilian 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

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

[31] BPD Report, page 21, paragraph 3; CAD Report, pages 6-7.

[32] BPD Report, page 21, paragraph 3.

[33] The foam baton round used by BPD looks like a rubber bullet.

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

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

[36] Moni Law, PRC Meeting, December 10, 2014; Anonymous Woman, PRC Meeting, December 10, 2014; Moni Law, PRC Meeting, June 10, 2015.

[37] BPD Report, page 23, paragraph 2; CAD Report, pages 6-8.

[38] BPD Report, page 22, paragraph 3; CAD Report, page 7.

[39] M. Gordon, PRC Special Meeting, February 24, 2015.

[40] BPD Report, page .22, paragraph 3; CAD Report, page 7.

and looting. These acts of citizen policing left the citizens open to violent retaliation from the vandals.[41] 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.[42] Residents who live in this area repeatedly tried to stop this conduct and were met with violence and intimidation.[43] The police were not present.[44]

The law enforcement presence at the University onramp kept the protesters off of the freeway.[45]

At 8:20 p.m. and thereafter, Lt. Schofield gave numerous Dispersal Orders at Berkeley Way and West Street.[46] Lt. Schofield also announced that the demonstration was an unlawful assembly.[47] BPD repeatedly attempted to kettle the protesters and their attempts repeatedly failed.[48]

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.[49] As the demonstrators regrouped near the UC campus there were more reports of vandalism and a reported fire.[50]

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."[51] BPD issued more Dispersal Orders and attempted (unsuccessfully) to kettle the crowd again.

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[41] BPD Report, page 22, paragraphs 1, 3.
[42] CAD Report, pages 7-8.
[43] Carol Denney, PRC Meeting, June 10, 2015.
[44] BPD Report, page 23, paragraph 2.
[45] BPD Report, pages 23-24.
[46] CAD Report 8:20 p.m. dispersal order; BPD Report, page 24, paragraph 4
[47] BPD videos.
[48] CAD Report 8:20 p.m. dispersal order & order to kettle; BPD report, pages 50-51.
[49] 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).
[50] CAD Report 9:26 p.m. and 9:46 p.m. describes rocks and bottles thrown from the back of the crowd toward officers.
[51] BPD Report, page 25 paragraph 3.

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.[52]

Police used batons to push protesters down Telegraph. The Alameda officers reported that they were directed to move the crowd southbound on Telegraph and they did so with their batons while yelling "Get back!"[53] 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.[54]

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."[55]

Simultaneously, a much larger crowd, estimated between 1000 and 1500 demonstrators, had gathered at Telegraph Avenue and Durant Avenue.[56] Dispersal Orders were given to the crowd that 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.[57]

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[52] BPD Report, p. 26.

[53] 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.

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

[55] Alameda Police Report, Supp. No. 7.

[56] BPD Report, page 26, paragraph 1.

[57] 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.")

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.[58] After the CS gas was used, reports of rock and bottle throwing and vandalism of police cars increased.[59] At approximately 11:18 p.m., a man was injured by a projectile at Fred's Market.[60] 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.[61] At 11:37 p.m., the Dispersal Orders began again.[62] 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.[63] 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.[64] 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.[65]

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

[59] 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).

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

[61] 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.

[62] CAD Report, page 17.

[63] 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.

[64] Ted Ambrose, City Council Meeting, December 16, 2014 (stated that as the protest began to die down the 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..

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

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."[66] 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 projectiles[67] and police vehicles were vandalized with inflammatory language and graffiti.[68]

At about 1:00 a.m. near Telegraph Avenue and Parker Street, the police again began using CS gas[69] to continue to push the protest southbound.[70] Marchers stated that they were told to go to Oakland.[71] The crowd complied with officer demands to move south, but the police continued to pursue them, deploying CS gas at six intersections on Telegraph[72] and using raised batons and baton jabs.[73] 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 marchers were driven over the city line into Oakland around 1:30 a.m.[74] No information has been provided regarding as to what involvement, if any, the BPD had once the crowd moved into Oakland.

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students that received tear gas as they were retreating); CAD Report, page 17; Walker Quinn, City Council Meeting, December 16, 2014; BPD videos.

[66] CAD Report, page 18.

[67] CAD Report, page 19.

[68] 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).

[69] CAD Report, page 20.

[70] 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.

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

[72] 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

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

[74] CAD Report, page 22.

## 3. DISCUSSION

**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 appeared to us to be the excessive use of less-lethal force, including baton strikes and CS gas - did little to de-escalate tensions in the crowd, and arguably antagonized members of the community who had been demonstrating peacefully.

The PRC also notes that overall BPD was unprepared to adequately respond to a protest of this nature and that many of the problems experienced by BPD on December 6 could have been anticipated and prevented by earlier and timelier preparation by BPD. We believe that the incidences that arose on December 6 shed light on the need for more proactive thinking 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.

Based on our review of its December 6 response, it is clear that the BPD needs to reevaluate its tactics and policies in the following areas:

**Crowd management:** BPD needs to develop better strategies for de-escalation and retain a focus on crowd management instead of crowd control.[75]

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 on crowd control not crowd management, a critical flaw in planning that set the stage for what was to follow.

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[75] "Crowd Management and Crowd Control . . . are distinct concepts. . . . Crowd Management is defined as 'strategies and tactic employed before, during and after a gathering for the purpose of maintaining the event's lawful activities.' . . . Crowd Control is defined as 'law enforcement response to a pre-planned event or spontaneous event, activity, or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd.' (CA POST Guidelines . . .)" BPD Report, p. 48.

While the purpose of the demonstration was to protest the abusive actions by police across the country, the vast majority of protesters conducted themselves in a peaceful manner. It is imperative that BPD continue to develop tools and techniques to assist officers in navigating complex and confusing crowd situations that may have mixed elements of legal and illegal, peaceful and violent behavior.

The City considers non-violent demonstrations concerning community issues to be positive and healthy activities. Therefore, the City should interact with such demonstrations primarily as events to be facilitated, rather than as threats to public safety. Facilitation of free expression, de-escalation of tension, and peaceful resolution of conflict are primary goals of police interaction with crowds. To advance and make meaningful its goal of protecting First Amendment rights of freedom of speech and assembly,[76] police must win the trust of the assembly that they can demonstrate in safety. Heavily armed, masked police officers using crowd control tactics may inflame an assembly and incite rather than prevent violent clashes. They can intimidate peaceful demonstrators and promote alienation and confrontation. Retired San Francisco police chief Tony Ribera said, in a newspaper interview, "law enforcement agencies are usually most successful at handling demonstrations when they approach with a non-confrontational stance and ramp up when necessary. 'It's hard to have a confrontational situation, then pull back from that.'"[77] The need for sufficient police resources must also be balanced against the chilling effect of a large and visible police presence.[78]

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

**Less-Lethal Force:** BPD needs to create more accountability in the use of less-lethal munitions, and establish clearer guidelines for use of less-lethal force in crowd control, including but not limited to, CS gas, baton strikes and less-lethal projectiles.

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[76] BPD General Order C-64, para. 22.

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

[78] OPD Crowd Control Policy, Sec. III.C.2, p. 4.

BPD staff told the PRC that they were unable to report how much CS gas or other less-lethal munitions they or mutual aid responders used. However, we discerned from other BPD materials that a significant amount of less-lethal ordnance was expended on December 6. The inability of the BPD to account for how much CS gas and other less-lethal munitions were used is troubling. The PRC agrees with the BPD that accountability for the deployment and use of less-lethal munitions should be improved. The PRC recommends an accounting by mutual aid responders, which is critical for full accountability.

The available anecdotal information suggests that a large quantity of CS gas was used on December 6. A December 7 BPD email states that "Last night's rioting consumed the vast majority" of their on-hand supply of CS gas and 40 mm less-lethal ammo, and requests that departments supply "as much as you are willing to loan us"[79] The Hayward police reported that a count of their specialty impact munitions and chemical agents revealed a need to restock inventory.[80] One Alameda police officer reported shooting 10 muzzle blasts of CS gas and throwing one CS canister, while another deployed five CS canisters, and six other officers deployed one CS canister each.[81]

The PRC is concerned that the use of CS gas on December 6 was excessive. Additionally, given the failures in the recording equipment, it is unclear what prompted the decision to use CS gas at specific times and locations, and how decisions were made to continue to deploy CS gas, and whether the continued use was necessary. Given the existing record, the PRC is concerned that the use of CS gas was arbitrary, and was not based on an accurate or full understanding of the situation on the ground. Confusing and conflicting orders by different law enforcement squads made it impossible for protesters to comply with orders at or around the time CS gas was deployed, and this confusion may have contributed to the apparent failure to disperse and to the agitation of members of the crowd. Additionally, the deployment of CS gas in densely populated neighborhoods posed a significant risk not only to non-violent protestors, but also to bystanders, and the residents of the surrounding neighborhoods.[82] The PRC is also troubled by BPD's failure to ensure that medical care was readily available for those exposed to the CS gas.

The PRC believes that Berkeley is out of step with its neighbors on the use of CS gas. The San Francisco Police Department does not use tear gas (a colloquial

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[79] December 7, 2014 email from Lt. Frankel to undisclosed recipients.
[80] Hayward Police Report, page 7.
[81] Alameda Police Report, various references.
[82] 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 apartment via open windows and caused food, dishes, and linens to be thrown out.).

term for CS gas).[83] According to the Oakland Police Department Crowd Control and Crowd Management Policy, "Chemical agents can produce serious injuries or even death," and officers are to "use the minimum amount of chemical agent needed to obtain compliance."[84] Further, "the use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel. Said devices shall be deployed to explode at a safe distance from the crowd . . ."[85] The PRC notes with concern that BPD's use of force policies do not include similar language that would address the significant concerns associated with the use of chemical agents.

The PRC considered whether to recommend a ban on the use of CS gas for crowd control purposes, but a majority of Commissioners did not support such a ban. Most felt that the BPD should be able to resort to CS gas in crowd control if critically needed. However, all Commissioners felt strongly that if CS gas is allowed, policies must be revised to limit its use to narrowly prescribed circumstances. These limitations should include requirements that BPD use the minimum amount of gas needed, and restrict its use where it may affect non-violent protestors, bystanders, and residents of the surrounding neighborhoods. Moreover, the Commissioners unanimously agreed that if CS gas is to be deployed to disperse a crowd, its impending use should be made explicitly clear in a dispersal order, and medical aid should be arranged in advance of deployment.

BPD representatives told the PRC that they were unable to report on how much less-lethal projectile munition the department expended. The only specific information that law enforcement agencies have provided about the use of less-lethal munitions is the following: 1) a report that BPD fired one less-lethal foam baton round shortly after 6:30 pm on MLK Jr. Way near Addison Street;[86] 2) a report around 11:15 p.m. that states "Fred's Market, man shot w/ projectile BFD loaded w/ rig."[87]; and 3) the Hayward Police's statement that they needed to restock their specialty impact munitions, without specifying how much was used.[88] No other information has been made available regarding the use of less-lethal munitions, including which departments fired them.

Similar to our concerns with the use of CS gas, the PRC is concerned that the use of less-lethal munitions on December 6 was excessive. It is most unfortunate

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[83] 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 conversation that SFPD has not used tear gas in the 20 years she has been with the department.

[84] OPD Crowd Control Policy, Sec. V.H.4.b. and Sec. V.H.4.c.

[85] OPD Crowd Control Policy, Sec. V.H.5.b.

[86] BPD report, p. 21; CAD report, page 7, reported at 18:34:15.

[87] CAD report, page 16, reported at 23:18:35.

[88] Hayward Police Report, p. 7.

that the absence of a contemporaneous record makes it impossible to ascertain what prompted the decision to deploy. Berkeley's less-lethal munitions in crowd control situations is not in keeping with best practices, and needs to be revised. Under Oakland's policy, less-lethal munitions "shall not be used for crowd management, crowd control or crowd dispersal during demonstrations or crowd events."[89] Furthermore, if they are directed "against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, officers, or the general public," less-lethal munitions "shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders."[90] Berkeley has no such restrictions. The PRC is recommending a revision of BPD's less-lethal munitions policy to minimize the risk that innocent persons will be hit.

**Baton Use:** BPD needs to develop policies and trainings to ensure that that the approved use of batons in crowd control is in keeping with best practices, and that all BPD officers use batons in an approved manner.

The numerous reports from civilians of being struck by batons as they were engaged in peaceful, lawful demonstrations are a cause of significant concern. These reports raise two categories of questions: whether this level of force was justified, and whether batons were used properly.

*Level of force*. Under current BPD policy, batons, as a form of non-lethal force, may be used by an officer: (a) to protect themselves or another from person from physical injury; (b) to restrain or subdue a resistant individual; or (c) to bring an unlawful situation safely and effectively under control.[91] Additionally, in a crowd situation, only reasonable force may be used if needed to disperse a crowd, make arrests, or move a crowd from an area.[92] The PRC finds that the level of baton usage by police on December 6 did not conform to policy as it was at times excessive and indiscriminate.

*Methods of baton use*. BPD officers are trained to use batons on certain target areas of a subject's body. The target and non-target areas are specified in POST training documents[93] and reviewed in BPD Mobile Field Force training.[94] Target areas are the "center mass," arms, legs, and torso, with the heart to be avoided;

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[89] OPD Crowd Control Policy, Sec. VI.F.2.
[90] OPD Crowd Control Policy, Sec. VI.F.2.a.
[91] General Order U-2, paragraph 19.
[92] General Order C-64, paragraph 6.
[93] As stated by BPD in a PRC meeting. "POST" refers to the Commission on Peace Officer Standards and Training, which sets minimum selection and training standards for California law enforcement.
[94] See BPD February 27, 2014 outline, "Defensive Tactics – Baton"; also, BPD Report p. 52, Section O., Use of Batons.

non-target areas are the head, neck, throat, heart, spine, kidneys and groin.[95] Based on the reports from civilians of baton strikes to the head area, it appears that some police officers violated training orders or policies in this regard. Moreover, although the BPD explained that the strikes landing on non-target areas resulted from the subject's movements, the number of reports of head strikes is inconsistent with that explanation. The PRC recommendation calls for a thorough review of BPD's policy regarding the use of batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs and rakes.

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

**Reporting Use of Force:** The PRC recommends that the After Action Report be prepared in a timely fashion, within 72 hours. Moving forward, we will address with BPD changing current policies on reporting use of force, so that each officer who uses force in a crowd management or crowd control situation would be required to prepare an individual report detailing the force used, and explaining why that level of force was necessary.

**Technology:** BPD needs to establish better practices to ensure both that our technology is capable of meeting our needs and that there are redundancies in our systems if the technology fails.

A number of technological failures contributed to the problems with the police response on December 6, all of which evince a lack of foresight, testing, and built-in redundancies. The East Bay Regional Communication System (EBRCS) was created for use in large-scale multijurisdictional action. EBRCS is designed to have specific radio channels to be used for multi-agency actions.[96] BPD did not adequately test the EBRC system. Some law enforcement agencies lines were encrypted and others were not. Therefore, the failure of EBRCS meant that BPD was not able to communicate with the mutual aid responders as planned.

Additionally, BPD also failed to either record or maintain any of its internal radio communications on December 6. The loss of this contemporaneous recording of the department's observations and actions had a significant impact on the ability to both reconstruct and test the recollections of those involved. No redundancies had been established to maintain these communications in the event of system failure.

BPD's video capacities were also inadequate. BPD's video batteries ran down, no backup batteries were available, and the cameras produced very poor-quality

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[95] See prior footnote.
[96] BPD Report, page 46, paragraph 4.

images. BPD's broadcast communication system was also inadequate and limited the efficacy of the crowd dispersal orders.

BPD must revise its policies, practices, and training to ensure these issues are corrected and will not reoccur in the future.

**Mutual Aid:** BPD needs to increase accountability to better ensure that the conduct of mutual aid responders is in keeping with Berkeley's values and rules of engagement.

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

**Media:** BPD needs to establish better policies and practices to avoid limitations on media access and better ensure the safety of members of the media, especially in crowd control situations. The PRC is requesting that the City Council refer the matter of media access back to the PRC to form a subcommittee to address the issue.

## 4. RECOMMENDATIONS

The PRC reviewed the 32 recommendations of the Berkeley Police Department in its post-incident report (pp. 3 – 8). The PRC agrees with some of the recommendations but, for most, proposes alternative recommendations of its own, and makes two new recommendations. All the recommendations are informed by the PRC's findings and have their basis in the analyses found in the Discussion section of this report.

Communication

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

  **PRC**

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

- ***Recommendation #1***

  *BPD*

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

  **PRC**

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

- ***Recommendation #2***

  *BPD*

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

  **PRC**

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

**more detailed information to the crowd; all communications be clearly identified as coming from BPD. We urge the City to adopt rules for BPD's use of social media as quickly as possible.**

- ***Recommendation #3***

  *BPD*

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

  **PRC**

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

- ***Recommendation #4***

  *BPD*

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

  **PRC**

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

Tactical Command

- ***Recommendation #5***

  *BPD*

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

  **PRC**

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

- ***Recommendation #6***

  *BPD*

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

  **PRC**

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

  **The PRC agrees that a lack of mission clarity hampered the BPD's success**

**on December 6, but where the BPD sees lack of clarity as a tactical confusion about the priority of specific tasks, we find a strategic lack of clarity. Deployments during demonstrations should include clear and specific objectives. Field Commanders should be given specific guidelines and priorities to consider when making deployment decisions, including whether a given police action will improve the situation, or escalate tension and confrontation between police and protesters, and should make redeployment decisions proactively based on known situational awareness and the approved guidelines.**

- ***Recommendation #7***

  *BPD*

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

  **PRC**

  (See PRC Recommendation to #6 above.)

- ***Recommendation #8***

  *BPD*

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

  **PRC**

  **1) The City considers non-violent demonstrations of concern about community issues to be positive and healthy activities. The City will interact with such demonstrations primarily as events to be facilitated rather than as threats to public safety.**

  **2) Heavily armed, massed police using crowd control tactics may inflame an assembly and incite rather than prevent violent clashes. They can intimidate peaceful demonstrators and promote alienation and confrontation.[97] The need for sufficient police resources must also be balanced against the chilling effect of a large and visible police presence.[98]**

  **3) BPD orders call for protecting First Amendment activities (freedom of speech and assembly).[99] For this protection to have meaning, police must win the trust of the assembly that they can demonstrate in safety.**

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

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

[98] OPD Crowd Control Policy, Sec. III.C.1.

[99] BPD General Order C-64, para. 26.

**begin with a posture of crowd management, unless the event commences as an illegal assembly. Current BPD policy requires that a clear and present danger of imminent violence as a prerequisite for declaration of an illegal assembly, making it clear that non-violent civil disobedience is not grounds for such a declaration.[100] If police must move to a crowd control posture, the goal should be to de-escalate back down to crowd management. Police officers must make every effort to reduce tension and de-escalate conflict, with support from non-sworn City staff and elected/appointed officials.**

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

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

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

Deployment

- ***Recommendation #9***

  *BPD*

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

  **PRC**

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

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

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[100] BPD General Order C-64, para. 62.

- ***Recommendation #10***

  *BPD*

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

  **PRC**

  (See PRC Recommendation to #9 above.)

- ***Recommendation #11***

  *BPD*

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

  **PRC**

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

Maneuver

- ***Recommendation #12***

  *BPD*

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

  **PRC**

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

- ***Recommendation #13***

  *BPD*

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

  **PRC**

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

Situational Awareness

- ***Recommendation #14***

  *BPD*

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

**PRC**

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

- ***Recommendation #15***

  *BPD*

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

  **PRC**

  **The PRC recommends that the current City policy regarding the use of helicopters should be retained.**

Dispersal Orders

- ***Recommendation #16***

  *BPD*

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

  **PRC**

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

- ***Recommendation #17***

  *BPD*

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

  **PRC**

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

Use of Force

- ***Recommendation #18***

  *BPD*

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

  **PRC**

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

- ***Recommendation #19***

  *BPD*

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

  **PRC**

  **The PRC recommends that BPD's policy regarding the use of less-lethal munitions be revised to reflect that less-lethal weapons should only be direct-fired at a specific target, may never be used indiscriminately against a crowd or group of persons, and may be used only against a specific individual engaged in conduct that poses an immediate threat of loss of life or serious bodily injury. All less-lethal operators, including mutual aid responders, should be briefed regarding the rules of engagement for the specific mission prior to deployment. Command should review the use of force with all operators, including mutual aid responders, as it relates to accomplishing mission objectives prior to deployment.**

- ***Recommendation #20***

  *BPD*

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

  **PRC**

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

- ***Recommendation #21***

  *BPD*

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

  **PRC**

  **The numerous reports from civilians of being struck by batons as they were engaged in peaceful, lawful demonstrations are a cause of significant concern. BPD, in conjunction with the PRC, should review its policy regarding the use of batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs and rakes. Overhead strikes should be prohibited in crowd control and crowd management.**

- ***Recommendation #22***

  *BPD*

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

  **PRC**

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

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

- ***Recommendation #23***

  *BPD*

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

  **PRC**

  **Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas. The PRC recommends that an operational policy regarding the use of CS gas be established delineating a removal and transport process as well as establishing a secure triage area for the treatment of affected personnel and members of the public.**

Accountability

- ***Recommendation #24***

  *BPD*

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

  **PRC**

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

- ***Recommendation #25***

  *BPD*

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

  **PRC**

  **To improve accountability for the deployment and use of less-lethal munitions and CS gas, the PRC recommends that BPD and mutual aid responders perform an inventory of less-lethal munitions and CS gas both before and after deployment in a crowd control situation and, whenever an officer uses less-lethal force in a crowd control situation, that officer is responsible for preparing an individual report of such use within 72 hours.**

Training

- ***Recommendation #26***

  *BPD*

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

  - *Commanders should conduct crowd management table top exercises, in addition to departmental training, to explore topics such as planning, command and control, mutual aid management, tactics, and operations center logistics.*
  - *All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.*
  - *Mobile Field Force training with regards to conducting targeted arrests. Including a tactical review of how to deploy in order to better support a*

*mission of targeted arrests while maintaining the ability to transition into crowd control formations.*

- *Train sufficient personnel to use higher quality camera systems to gather better video evidence at protests.*

**PRC**

**The PRC endorsed BPD's Recommendation #26 as written, with the addition the following phrase, in bold:** All officers should continue to receive crowd management training every two years. We recommend the following trainings be developed in conjunction with the PRC, **and that these trainings include de-escalation tactics:**

- ***Recommendation #27***

  *BPD*

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

  **PRC**

  **The PRC should work in collaboration with BPD to develop a website and other informational materials to inform the public about the BPD's approach to protests, ground rules for them, and details of the warning and dispersal system.**

- ***Recommendation #28***

  *BPD*

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

  **PRC**

  **The PRC should work in collaboration with BPD to develop a website and other informational materials to inform the public about the BPD's approach to protests, ground rules for them, and details of the warning and dispersal system.**

Media

- ***Recommendation #29***

  *BPD*

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

**PRC**

(This recommendation is an alternative to both Recommendations #29 and #30 or the BPD.)

**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.**

- ***Recommendation #30***

  *BPD*

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

  **PRC**

  (See PRC Recommendation to #29 above.)

Equipment

- ***Recommendation #31***

  *BPD*

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

  **PRC**

  **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 civilians' 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.**

- ***Recommendation #32***

  *BPD*

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

  **PRC**

  **The PRC endorsed BPD's Recommendation #32 as written.**

- ***New Recommendation regarding mutual aid***

  **PRC**

  **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 regarding the 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 that use-of-force policies by mutual aid responders is consistent with our policies. We request that the BPD make specific recommendations on strategies and procedures to achieve these goals.**

## 5. MINORITY REPORT

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.

- ***Recommendation #22 (Use of CS gas – see page 28 above)***

  The undersigned Commissioners recommend:

  **Prohibit the use of CS gas in crowd control and crowd management.**

  Signed: Commissioners Bartlett, Lippman, and Sherman

- ***Recommendation #31 (Video surveillance– see page 31 above)***

  The undersigned Commissioners recommend adding this sentence to the PRC majority's recommendation:

  **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: Commissioners Bartlett, Lippman, and Sherman

- ***Mutual Aid Recommendation (see page 32 above)***

  The undersigned commissioners recommend:

  **Abide by state law, section 8618 of the Government Code which states, "Unless otherwise expressly provided by the parties, the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident, including the direction of personnel and equipment provided him through mutual aid."[101]**

  **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."[102]**

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[101] http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode= GOV &sectionNum=8618

[102] http://www.caloes.ca.gov/LawEnforcementSite/Documents/1Blue%20Book.pdf

**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.[103]**

**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: Commissioners Bartlett and Lippman

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[103] "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

## 6. CONCLUSION

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

**Possible items for investigation.**

*"Less-than-lethal" (or less-lethal) force:*

- On December 6, 2014, did police officers fire less-than-lethal projectiles such as beanbags, rubber bullets, or others into a Berkeley crowd? If so, what agency conducted these shootings and under what authorization? What injuries resulted from these shootings?
- Were less-than-lethal projectiles deployed in violation of the following provision of General Order U-2 (Use of Force)?
  16 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:
  (a) When an act of violence is occurring, or is about to occur;
  (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
  (c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,
  (d) To resolve a potentially violent incident not otherwise described above.
- Do BPD policies require a "clear shot" for less-than-lethal munitions such as rubber bullets?

*Baton use.*

- Are over-the-head baton strikes permitted or banned to BPD officers?
- How many such strikes were delivered on December 6, by what agency, and under what authorization?

*Media.*

- Confirm allegations of physical assaults on media representatives carrying visual identification, including a baton strike to the head. What agency conducted these strikes and under what authorization? What steps are being taken to prevent a recurrence, even in a chaotic situation?

*Mutual Aid.*

- Did BPD or City of Berkeley management authorize the deployment of armored vehicles on Saturday December 6?
- When responding departments' actions conflict with such BPD or City policies (e.g. deployment of militarized armored vehicles or baton strikes to the head), what action is taken by the BPD command? What is the process for a decision not to invite such a department back for future mutual aid events?

*Policing strategy.*

- What is the BPD's policing strategy with respect to the particular needs (including cultural and historical needs) of the African American community and other constituencies, including other communities of color, LGBT, homeless, mentally ill, otherwise disabled, and youth?
- How useful are such strategies and technologies (both formal and de facto) in achieving conflict reduction, respectful and restorative police practices, and a positive community perception of the BPD?[i]

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[i] "Police in riot gear and the tactics and equipment they use on protesters such as in Ferguson, Mo. and the Occupy movement in the Bay Area may not prevent violent clashes as much as inciting them...unnecessarily intimidating and alienating protesters." Nicholas Adams, UC Berkeley, August 22, 2014, "The Deciding Force Project," http://sanfrancisco.cbslocal.com/2014/08/22/do-riot-police-prevent-violent-clashes-or-incite-them-uc-berkeley-researchers-analyze-police-protester-dynamics/

UASI:

PRC supports the BPD's agreement with UASI, with the following condition: We recommend to the City Council that, in light of the militarization concerns in this community, Council direct the BPD to refrain from participating in Urban Shield for one year, and that the BPD and PRC take that year to review the Urban Shield program and take effective measures to prevent hyper-militarization of the BPD.

NCRIC:

PRC recommends to the City Council that, in light of the history of racial, ethnic, religious, and political abuses in the Suspicious Activity Reporting program, Council direct the BPD to refrain from participating in SAR reporting or other NCRIC-related activities for one year, and that the BPD and PRC take that year to review the intelligence fusion program and determine its merits and drawbacks.